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FinReg Update

Guernsey – Q4 2020



Quick Fire Updates

1. Approval of the Bailiwick's supervisory and regulatory laws

The Privy Council has formally approved the following supervisory and regulatory laws:

- the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020
- the Protection of Investors (Bailiwick of Guernsey) Law, 2020
- the Banking Supervision (Bailiwick of Guernsey) Law, 2020 and
- the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020

While these laws have been registered by the Royal Court of Guernsey they are **not yet in force**. We await the commencement ordinances that will bring these new laws into effect, as well as publication of the rules and regulations, which will be prescriptive in setting out the detail under those laws.

2. Working remotely

The Guernsey Financial Services Commission (the **Commission**) has issued guidance to licensees that are considering moving to a remote working model.

The guidance, which was issued before the current lockdown measures, expects licensees to ensure that their controls, policies and procedures are appropriately updated, with reference to those considerations set out in its guidance ([here](#)). These include the licensee:

- updating its business plan, business risk assessment and business continuity plan
- providing confirmation of any amended registered office address, where business is being conducted and where records are being maintained
- putting suitable procedures in place for virtual signatures
- ensuring adequate insurance cover is in place to provide for home working, including changes to physical security and cyber risks
- maintaining the four-eyes licensing requirement
- maintaining contact with its MLRO and consideration of any implications on its compliance monitoring arrangement.

3. Cyber security rules and guidance

The Commission has issued a consultation (now closed) on its proposal to introduce Cyber Security Rules (the **Cyber Security Rules**) and guidance with direct application to all licensees licensed under Guernsey's regulatory laws.

The increase in remote working, together with recent high-profile cyber-crime sanctions highlight the importance of the Commission implementing a cyber-security regime, which mandates and guides licensees towards compliance.

The proposal follows on from the Commission's 2019 Cyber Risk Thematic, which suggested that local industry supported a set of rules and guidance that follows five core principles, namely **Identify, Protect, Detect, Respond** and **Recover**.

View our Legal Update [here](#).

4. Amendments to the Handbook

The Commission has sought feedback (consultation now closed) on its proposals to amend the rules and guidance in Chapters 3 and 7 of the Handbook on Countering Financial Crime and Terrorist Financing (version dated 30 October 2020) on the risk-based approach and on legal persons and legal arrangements.

A summary of the proposed changes are available [here](#).

5. Banking Deposit Compensation Scheme

The Commission has signed a memorandum of understanding (**MoU**) with the Board of the Guernsey Banking Deposit Compensation Scheme (**GBDCS**). The GBDCS was established in 2008 as a safeguard for Guernsey depositors whereby it would make payments of up to £50,000 per depositor in the event of a Guernsey licensed bank's failure. The MoU creates a framework for the co-operation of the Commission and the Board of the GBDCS, both of which are independent bodies.

Further details are available [here](#).

6. Dormant bank accounts

A policy letter proposing the introduction of a new law requiring the transfer of monies sat in 'dormant' bank accounts to a central statutory fund (the **Bailiwick Dormant Accounts Fund (BDAF)**) will be considered by the States at its next meeting.

The legislation will apply to bank accounts which are held by account holders (wherever they reside) with banks in the Bailiwick.

An account will generally be considered to be 'dormant' if it has been open for at least 15 years and where, during the last 15 years, no transactions have been carried out at the initiation of the account holder and the Bank has had no contact with the account holder (in relation to the 'dormant' account **or** another account held by the account holder with the Bank). The Bank will also be able to seek a notice from the Committee permitting the transfer of monies with a dormancy of less than 15 years.

Once transferred to the BDAF the monies will be made available for good causes throughout the Bailiwick and any unused monies will be invested.

Account holders have an unlimited time to claim back the monies transferred (provided they have a valid claim) which the Bank will pay back (in sterling regardless of the currency of the 'dormant' account) and which the Bank will claim reimbursement from the BDAF.

Notably any monies subject to a security interest and/or criminal justice legislation, will not be able to be transferred.

View the Policy Letter [here](#).

7. Credit and Finance

Another policy letter to be considered by the States at its next meeting concerns the proposed repeal of the Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008 (NRFBSB) which will be re-modelled with new credit and finance legislation.

The new legislation (yet to be drafted) will, among other things, address the provision of credit by non-banks (which under the current NRFBSB framework are required to register with, but not licensed by, the Commission), digital services and AML/CFT.

The new legislation is intended to be proportionate and not to unnecessarily restrict access to credit from either Bailiwick or non-Bailiwick business while strengthening consumer financial protection.

View the Policy Letter [here](#).

8. Annual Validation (Registry) – change to filing period

The annual validation period for companies has changed for 2021. Companies (other than those incorporated during May 2021) are now required to file their annual validation between **1 June 2021** and **31 July 2021** (previously 1 January 2021 and 28 February 2021). This aligns with the filing of annual validations for limited partnerships, limited liability partnerships and foundations.

A new annual validation form will be made available by the Guernsey Registry in May 2021. Companies will be required to provide additional information to meet evolving international standards, including to address two of the recommendations in the 2016 Guernsey MoneyVal evaluation report.

The Registry's fees and penalties for 2021 are available [here](#). Notably late filing fees for annual validations have been replaced by civil penalties per company (or cell, if applicable) and will be applied from 1 August 2021 onwards.

9. Regulatory enforcement

The Commission has imposed fines as well as certain prohibition orders on a local licensee, its directors and its MLRO for failing to ensure compliance with regulatory requirements and failing to meet the minimum criteria for licensing under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the **Fiduciaries Law**). View the decision [here](#).

In another decision, the Commission has imposed a fine coupled with a prohibition order on an individual for failing to fulfil the 'fit and proper' requirements set out in the Fiduciaries Law. This particular case highlights the danger of backdating documents so as to create false and misleading business records (including an official record). View the decision [here](#).

The Commission has also made a successful application to the Royal Court of Guernsey for a disqualification order to be made against an individual (who was already subject to a prohibition order at the time certain offences were committed). View the details [here](#).

10. Income Tax – extension for filing

The filing deadline for the calendar year 2019 income tax return (for companies and individuals) has been extended from 30 November 2020 to **28 February 2021**. The Revenue Service will not be sending out reminders and any returns filed on 1 March 2021 onwards will be considered late and will incur a penalty.

11. Data Protection – new registration requirements

Amendments to Guernsey's data protection regime are **now effective** meaning that **all** entities established in the Bailiwick handling personal data, ie data controllers and/or data processors, are legally required to register with the Office of Data Protection Authority (**ODPA**). Any exemptions from registration that applied before 1 January 2021 expired under the new regime on 31 December 2020.

Entities that are registered and/or regulated by the Commission may also register with the ODPa as a 'Levy Collection Agent' which will allow them to deal with the registration requirements of, and on behalf of, entities which they administer but in doing so they do not take on any of the data protection obligations of these other entities.

View our legal update [here](#).

12. Data Breaches

Looking back at 2020, reported data breaches were down 30 per cent on the previous year.

Consistent with previous statistics, 34 personal data protection breaches were reported to the ODPa in the two months leading up to 31 October 2020, the vast majority of which were accidental.


33 breaches were reported during November and December 2020, 27 of which were accidental, four of which were due to 'inappropriate disclosure', one was due to 'loss of data/paperwork/device' and one was due to a 'cyber incident'.

View the details [here](#).

13. CIFO

Two consultations have been issued by the Channel Islands Financial Ombudsman (**CIFO**), one on its proposed levies for 2021 (which closes on 4 February 2021) ([here](#)) and another on its proposal to publish summary complaints statistics on a financial services provider (**FSP**) named basis (which closes on 5 February 2021) ([here](#)).

CIFO currently publishes a range of information, including final Ombudsman decisions and quarterly complaints statistics. The new information, which will provide detail on the number and nature of complaints cases closed, and the outcome for complaints cases closed, in respect of each FSP on a named basis, will add a new level of statistical reporting to CIFO's commitment to full 'transparency' in its operations as an independent financial sector ombudsman.



The intention is to start including summary complaints statistics broken down by FSP in CIFO's next (May 2021) Annual Report.

The consultation seeks feedback on CIFO's proposed approach to 'operationalise production and verification of this new complaints data to ensure accuracy' and is **not** about the proposed publication of the summary complaints statistics.

In other news, CIFO has published the number of complaints it has received during Quarter 4 of 2020. The full report is available [here](#) (with a more detailed analysis of complaints made during the whole of 2020 to follow in CIFO's annual report due to be published in the summer).

14. Possible zero or negative interest rates

The Bank of England is seeking feedback on any potential operational implications that firms may encounter should its Monetary Policy Committee implement a zero or negative policy rate.

In light of this the Commission is advising Guernsey regulated firms to consider if and how they might be affected by the implementation of a zero or negative policy rate, including any contracts that might be materially affected and/or any technical operational issues in their systems.

View the Bank of England's letter [here](#).

15. MO FINREG FORUM

If you would like to participate in our FinReg Forum, which provides quarterly updates on similar matters for each of Guernsey, Jersey (where the forum is hosted) and the Isle of Man (provided by Cains), please do get in touch.

Contacts



John Lewis
Managing Partner | Advocate
Corporate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 505
john.lewis@mourant.com



Abel Lyall
Partner | Advocate
Litigation
Mourant Ozannes (Guernsey) LLP
+44 1481 739 364
abel.lyall@mourant.com



Christopher Edwards
Partner | Advocate
Litigation
Mourant Ozannes (Guernsey) LLP
+44 1481 739 320
christopher.edwards@mourant.com



Darren Bacon
Partner | Advocate
Corporate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 503
darren.bacon@mourant.com



Frances Watson
Partner | Advocate
Corporate
Mourant Ozannes (Guernsey) LLP
+44 1481 739 331
frances.watson@mourant.com



Gordon Dawes
Partner | Advocate
Litigation
Mourant Ozannes (Guernsey) LLP
+44 1481 731 479
gordon.dawes@mourant.com



Helen Wyatt
Partner | Advocate
Corporate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 408
helen.wyatt@mourant.com

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