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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades against a clear blue sky. The buildings are arranged in a way that they appear to converge towards the top of the frame. A small red flag is visible on one of the buildings in the middle ground.

FinReg Update

Guernsey - May to August 2021

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Quick Fire Updates

1. Regulatory Laws – general update

There has been long-awaited progress in relation to the revision of laws project (**Revision of Laws**) which, as noted in our previous Updates, modernises Guernsey's regulatory laws in the key areas of financial regulation - investment business, deposit-taking, insurance business, insurance intermediary business and fiduciary business.

Most notably, commencement ordinances have been published and approved by the States of Guernsey (the **States**) bringing the following new regulatory laws into effect on **1 November 2021**, subject to any savings and transitional provisions (the details of which are not yet known):

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

With regards to insurance, proposed amendments to both the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (the **Insurance Laws**) have also been approved by the States, again with a commencement date of **1 November 2021**.

The proposed amendments to the Insurance Laws transfer the enforcement, sanctions and penalty provisions from those laws into the new 2020 Enforcement Powers Law, as well as incorporating updates to align the Insurance Laws with the new 2020 regulatory laws listed above.

For a recap of the Revision of Laws project, view our Legal Update [here](#).

2. Regulatory Laws – new consultations

The Guernsey Financial Services Commission (the **Commission**) has issued two further consultations since our last Update in May in connection with the Revision of Laws.

The first consultation concerned the codes and guidance which the Commission proposes to re-issue under the regulatory laws ([here](#)) (now closed), which will remain largely consistent with the current codes and guidance.

The other, more recent consultation (which closes on **15 September 2021**), concerns the issue of new annual compliance return rules (**Compliance Rules**) under the 2020 Banking Law. Currently licensed banks are required to carry out an annual review in accordance with the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (the **1994 Law**) which specifies the areas which must be considered. The 2020 Banking Law continues to require licensed banks to conduct an annual review however the


criteria which must be considered will be set out in the form of rules issued by the Commission, ie the Compliance Rules, as opposed to the law itself, as currently. As such the substance and purpose of the Compliance Rules are expected to remain the same as the current requirements under the 1994 Law and associated guidance; and the requirements of the Annual Compliance Form are not changing substantially.

View the consultation [here](#).

3. Regulatory – new (other) consultations

The Commission has issued the following consultations since our last Update:

- **2022 Fees Consultation** ([here](#)) (closed on **10 September 2021**)
The Commission is consulting on an overall fee increase of 10.1 per cent for all sectors; a restructuring of fees for the investment sector; changes arising from the Revision of Laws; and creating a cap for pension scheme fees;
- **Ancillary vehicles** ([here](#)) (closed on **17 June 2021**)
This consultation set out the feedback received to the Commission's Discussion Paper issued in August 2020 in relation to the types of vehicles to be considered eligible as an ancillary vehicle (**AV**) and, if eligible, the requisite criteria. In short, the 2020 Fiduciaries Law introduces a new statutory exemption which, subject to prior notification to the Commission, will automatically apply to AVs;
- **Proposed replacement of the current Fiduciary Rules 2020 by the new Fiduciary Rules, 2021** ([here](#)) (closed on **17 June 2021**)
This consultation considered proposed amendments and additions that reflect matters which will be introduced or changed when the 2020 Fiduciaries Law comes into force; and
- **Amendments to the Banking Rules on Accounts, Disclosure & Large Exposures** ([here](#)) (closed on **11 May 2021**)
This consultation, relevant to all banking licensees, considered the following:
 - accounting information and disclosure - to clarify the accounting standards banking licensees incorporated in the Bailiwick may use and to update the existing disclosure requirements to include a limited amount of key regulatory information);
 - large exposures and upstreaming - to update the regime to bring it more fully in line with international standards and reduced concentration risk, while making a number of allowances for the nature of the local industry.



The Commission also used this consultation as an opportunity to advise licensees of its intention to update the sign-off and verification requirements for banking regulatory returns.

4. The Handbook - update

The Commission has amended the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) by updating the country lists in Appendix C and Appendix I of the Handbook reflecting the Financial Action Task Force's (FATF) updated list of jurisdictions under increased monitoring, which includes Malta, Haiti, the Philippines and South Sudan.

The amendments also see Ghana being removed from Appendix I, having addressed its AML/CFT deficiencies. In addition open-ended schemes, such as exchange-traded funds, are now included within section 4.8.3 of the Handbook (schemes traded on a recognised stock exchange).

View the Commission's announcement [here](#).

5. Audit exemption

The criteria which a company must meet to be able to qualify as audit exempt have been updated by the Companies (Audit Exemption) (Amendment) Regulations, 2021 (the **Audit Exemption Regulations**).

The Audit Exemption Regulations increase the permissible turnover and net balance sheet thresholds a company may have whilst remaining eligible to pass a waiver resolution under the Companies (Guernsey) Law, 2008 which exempts the company from the requirement to have its accounts audited.

View the Audit Exemption Regulations [here](#).

6. Economic substance - partnerships

Economic substance requirements have been extended to apply to all partnerships carrying on a 'relevant activity', subject to certain exemptions. This means that partnerships in existence as at **30 June 2021** will be in scope for accounting periods commencing on or after **1 January 2022** and partnerships formed on or after **1 July 2021** will be in scope from the date of formation.

View our Legal Update [here](#).

7. CIFO

The Channel Islands Financial Ombudsman (CIFO) has published the number of complaints received during the second quarter of 2021 (Q2).

According to the report, CIFO received 176 complaints of which 114 were within its remit. Current accounts, health insurance and other insurance were the top products complained about and in the main, complaints related to poor administration/delay, non-payment of insurance claim and fees/charges.

Of the 80 complaints which were mediated/determined by CIFO in Q2, 41 were found in favour of the complainant with 36 of

those cases receiving compensation higher than the financial services providers' (FSP) original offer. The remaining 39 cases were mediated in favour of the FSP.

The full report is available [here](#).

8. Climate change – Code of Corporate Governance

Following the Commission's Spring Green Consultation issued on 11 March 2021, the Commission has now published the amended Finance Sector Code of Corporate Governance (the **Code**) which will come into effect for financial years starting from **1 October 2021**.

The Code requires Boards to consider the impact of climate change on their firm's business strategy and risk profile in a way that is proportionate to the nature of their business including, where appropriate, making climate change related disclosures.

View the Code ([here](#)) and our Legal Update in relation to the duties of Guernsey directors in relation to climate change ([here](#)).

9. Incorporated cell companies

The Companies (Incorporated Cell Companies) (Prescribed Classes) Regulations, 2021 set out the types of company that can be incorporated as, or converted into, an incorporated cell company (ICC) with effect from **2 July 2021**.

These regulations remove the requirement that a non-financial services business ICC is administered by a licensed person, thus reducing the administration costs for those non-financial services businesses wishing to establish as an ICC in Guernsey.

For further information on ICCs generally, view our Legal Update ([here](#)).

10. 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.

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