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FinReg Update

Guernsey – Q1 2021



Quick Fire Updates

1. Regulatory Laws - general update

As noted in our previous Legal Update, the supervisory and regulatory laws in relation to the investment, banking and fiduciary sectors have been approved by the Privy Council and registered by the Royal Court but are not yet in force. According to the Guernsey Financial Commission's (the **Commission**) latest announcement ([here](#)), it is expected that those laws are likely to be enacted towards the end of this year.

Draft rules and regulations under each of those laws, and also the insurance and enforcement regulatory laws, have now been published and are the subject of industry consultation (which is open until **17 June 2021**). According to the consultation paper, these draft rules and regulations do not set out to implement a change in policy and, save for new terminology, will be familiar to licensees.

A second consultation is expected to follow in relation to new draft codes and related guidance followed by another, separate consultation centring on rules which have been omitted from the current consultation (which the Commission consider may require significant changes).

The Consultation is available [here](#).

2. Changes to Guernsey's Companies law

A number of amendments have been made to the Companies (Guernsey) Law, 2008 (the **Companies Law**) following States' approval on 28 April 2021.

The amendments, which are effective from **1 May 2021**, are the result of industry feedback to a consultation in 2018 and are intended to ensure that the Companies Law continues to best serve the needs of the business community.

Further details are set out in our Legal Update [here](#).

3. Proposals to introduce LLCs

The States has approved proposals to introduce limited liability companies (**LLCs**) into Guernsey. An LLC is a flexible hybrid structure combining the features of a company and a partnership, ie limited liability and separate legal personality (akin to a company) and tax transparency (similar to a partnership). An LLC is not dissimilar to a limited liability partnership (**LLP**), sharing some of the same key features.

LLCs already feature in a number of other jurisdictions such as the Isle of Man, Cayman Islands, Bermuda and most recently Jersey, and are used in a diverse range of roles such as general partners, management vehicles, carried interest vehicles, portfolio holding vehicles, joint venture vehicles and private equity vehicles. LLCs have traditionally been associated with the United States (**US**) and it is anticipated that the introduction of the Guernsey LLC will ensure that Guernsey can compete with similar regimes in other jurisdictions and support the US market by giving the option of using a Guernsey vehicle with features and characteristics that they are already familiar with.

Further details are set out in our Legal Update [here](#).

4. Economic substance – partnerships to be brought within scope

In response to Guernsey's commitment to the EU Code of Conduct Group, the Guernsey Revenue Service (**GRS**) has announced that economic substance requirements which currently apply to companies will be extended to all partnerships carrying on a 'relevant activity' (subject to certain exemptions which are currently under review by the EU Commission).

Notably collective investment schemes regulated by the Commission continue to be out of scope (unless self-managed); and any person who is a partner of the partnership is not required to meet the economic substance requirements (rather it will be considered at the partnership level).

Further details, including the GRS announcement, are set out in our Legal Update [here](#).

5. Cyber Security Rules and Guidance - update

New Cyber Security Rules (the **Cyber Rules**) and Guidance 2021 have been finalised and published following a six-week industry consultation in 2020 and replace the Commission's earlier cyber security guidance. The Cyber Rules apply to **all licensees** under Guernsey's regulatory laws and can also be used by non-licensed firms such as Prescribed Business or Non-Regulated Financial Services Business.

The focus is on five core principles outlined in a number of international cyber security frameworks, namely Identify, Protect, Detect, Respond and Recover, with Boards having ultimate responsibility for ensuring that the rules are followed.

The Cyber Rules have **immediate effect**, but there are transitional arrangements allowing firms to implement changes to their internal controls to ensure compliance with the new rules by **9 August 2021**.

The Cyber Rules and Guidance are available [here](#).

6. The Handbook – update


Changes have been made to Chapters 3 and 7 (Risk-Based Approach and Legal Persons and Legal Arrangements) of the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) in addition to updates to Chapter 12 (international sanctions) to reflect the new mechanisms for the implementation of UN and UK sanctions in Guernsey following BREXIT.

The revised Handbook, which is applicable to all financial services businesses and prescribed businesses, is effective from **15 February 2021** and is available [here](#).

7. Spring Green Consultation Paper

The Commission has consulted on proposals to amend the Finance Sector's Code of Corporate Governance (the **Code**) to take specific account of climate change considerations.

The Commission proposes to introduce a new requirement in the Code itself that, with effect from **1 October 2021**, requisite



consideration and commitment is given at board level to the licensee's business strategy and risks in relation to climate change. More prescriptive rules may follow once general international agreement is reached on what standards should apply to which types of financial services.

Read the Consultation paper [here](#).

8. Regulatory enforcement

The Commission has made several public statements, prohibition orders and/or imposed financial penalties over the last quarter, including:

- Prohibition order against an individual for failing to provide 'full, frank and unambiguous' information in relation to the circumstances surrounding that individual's resignation from previous employment;
- Public statement and imposition of a fine of £140,000 against a licensee for failing to fulfil the minimum criteria for licensing under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000; and
- Prohibition orders and financial penalties on a number of individuals for failing to meet the minimum criteria for licensing (the details of which can be found on the Commission's website [here](#) (Prohibitions) and [here](#) (Public Statements)).

As noted in our Legal Update ([here](#)), public statements such as these provide an understanding of the standards the Commission expects of licensees.

9. Appeals to the Commission

The Royal Court has confirmed that the statutory appeal period of 28 days under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 is indeed 28 days and that the Court does not discretion to extend that time limit.

For further information, read our Legal Update [here](#).

10. Data protection: emails

The Office of Data Protection Authority (ODPA) has given clarification that an email sent to an incorrect recipient may not be a breach (in which case it may not need to be reported). It all depends on the context the email was sent in, the contents of the email (ie does it contain personal data?) and whether the circumstances pose someone a risk. If in doubt, the ODPA advises you to speak with your Data Protection Officer or to call the ODPA.

Read [here](#) for further information.

11. CIFO

The Channel Islands Financial Ombudsman (CIFO) has published the number of complaints received during the first quarter of 2021. According to the report, CIFO received 117 complaints of which 70 were within its remit. Current accounts, home insurance and money transfer were the top products and in the main,

complaints related to poor administration/delay, non-payment of insurance claim and refusal of service.

Of the 94 complaints which were mediated/determined by CIFO, 46 per cent were found in favour of the complainant and the remaining 54 per cent in favour of the financial services providers (FSPs). Further details, including the full report, can be seen [here](#).

CIFO has also announced that it is on track with publishing a summary of complaints statistics broken down by FSPs in its May 2021 Annual Report – this will be the first time CIFO will do so on an FSP-named basis.

12. New Capacity Law

The new Capacity Law (the **Capacity Law**) has now been registered by the Royal Court, albeit it is not yet in force. It is expected to be implemented in stages, starting with the provisions relating to Lasting Powers of Attorney (which we understand will be finalised for States approval by the end of this year).

Currently, an attorney is not able to act when the person who appointed them loses their capacity, rather limiting the utility of a Power of Attorney (PoA) in Guernsey. Instead a guardianship order is currently required to deal with a person's affairs if they lose capacity. The new Capacity Law will rectify this by introducing the concept of Lasting Powers of Attorney (which already exist in Jersey and in England and Wales). The PoA will remain in force after the grantor has lost the capacity to make decisions for themselves.

13. 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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