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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades against a clear blue sky. A red flag is visible on one of the buildings. The bottom portion of the image is overlaid with a dark red semi-transparent banner containing white text.

FinReg Update

Guernsey - September to November 2021

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Quick Fire Updates

1. Regulatory Laws – general update

The long-running Revision of Laws project has reached its conclusion with Guernsey's new regulatory, supervisory and enforcement legislation now in force.

The following laws are effective from **1 November 2021**:

- the Protection of Investors (Bailiwick of Guernsey) Law, 2020 ([here](#))
- the Banking Supervision (Bailiwick of Guernsey) Law, 2020 ([here](#))
- 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](#)).

While not new legislation, the Insurance Business (Bailiwick of Guernsey) Law, 2002; and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 have both been amended to reflect the necessary changes brought about by Revision of Laws, which are also effective from **1 November 2021**.

Over the past few weeks we have published a series of Legal Updates setting out noteworthy provisions in the new legislation, some of which are universal across the industry sectors and others of which are industry specific.

Our Legal Updates are available via our 'Guernsey Revision of Laws Hub' [here](#).

2. Credit and Finance - survey

The Guernsey Financial Services Commission (the **Commission**) has carried out a survey (now closed) of firms that are likely to be impacted by the new credit and finance legislation. This includes businesses that are already licensed by, or registered with, the Commission as well as those that fall outside the current regulatory framework.

The purpose of the survey is to assist the Commission gain a better understanding of the business currently being undertaken in the Bailiwick and help in guiding the Commission's proposed supervisory approach.

The new credit and finance legislation (the creation of which was approved by the States of Guernsey earlier this year) will, among other things, require firms which, by way of business, provide credit, lending or finance, or act as finance brokers, to be licensed by the Commission.

View the objectives of the consultation [here](#).

3. Regulatory Fees for 2022 - Update

Following a consultation on its fees for 2022, the Commission has confirmed that there will be an increase of 7.6 per cent in licence fees paid by firms from **1 January 2022** as opposed to the increase of 10.1 per cent the Commission consulted on.

Fees in the investment sector will be restructured, with the types of investment licensees that require greater supervisory attention

to pay a licence fee based on the size of the firm. An upper cap will be introduced on the level of fees charged per member in a pension scheme to 7,500 members.

View the Feedback on the Commission's consultation [here](#).

Invoices for 2022 annual fees will be distributed by the Commission in December again using the generic email address held on record for each licensee and registrant (not in paper copy). Further details are available [here](#).

4. Notification of surrenders and suspensions of licences

Licensees and registrants are being reminded to notify the Commission as soon as possible if they intend to surrender or suspend their licence, or one that they administer, failing which they may be liable to pay the 2022 annual licence fee in full ([here](#)).

5. Pension/Gratuity Scheme – Quarterly Return

Fiduciary licence holders forming, managing or advising on pension or gratuity schemes are no longer required to complete 'Form 126 Fiduciary – Pension Scheme or Gratuity Scheme Quarterly Return' on a quarterly basis. Form 126 has been replaced with Form 128 which essentially contains the same information and must be completed on an **annual basis**, as at 30 June each year. The first Form 128 should be submitted with the Commission by **31 August 2022** (showing information as at 30 June 2022).

6. Banking Rules on Accounts, Disclosure & Large Exposures - Update

The Commission has published feedback to its consultation on proposed amendments to the Banking Rules on Accounts, Disclosure & Large Exposures (the **new Rules**), which are now in force ([here](#)).


Principally, all respondents were in favour of the Commission specifying the accounting standards that banking licensees incorporated in the Bailiwick must use when preparing their audited accounts (IFRS; UK GAAP; or US GAAP) which matched the standards currently being used by licensees. With regards to the two guidance notes providing templates for audited accounts and abridged accounts, those have since been withdrawn as they are outdated (abridged accounts are not referenced in the new Rules).

The Feedback is available [here](#).

7. Fiduciary Rules - Update

The Fiduciary Rules 2020 have been replaced with the Fiduciary Rules and Guidance, 2021 ([here](#)) to align with the new 2020 Fiduciaries Law.

The key revision relates to the re-categorisation of fiduciary licensees, ie the concept of 'lead' and 'joint' licensees has been dispensed with and replaced by 'primary' and 'secondary' licensees respectively.



A primary licensee cannot have a corporate director and a secondary licensee (which can have a corporate director) must be in the same corporate group as its primary licensee and is prohibited from actively trading. The Commission's expectation is that this reflects current practice whereby 'joint' (now secondary) licensees are passive and do not operate independently from the 'lead' (now primary) licensee.

Fiduciaries should therefore carefully consider the services performed by any secondary licensees to ensure that they are not actively trading post 1 November and that charging provisions in trust instruments envisage and permit payment direct to the primary licensee.

8. Data protection

After a two month period charting the highest figures for personal data breaches since late 2019, figures published for September and October are the second **lowest** since statutory breach reporting was introduced.

According to the latest breach statistics published by the Office of Data Protection Authority, 26 personal data breaches were reported over the last two months. Sending personal data to the wrong recipient is an ongoing theme and the category consistently responsible for the highest number of reported breaches.

Further information is available [here](#).

9. CIFO

The Channel Islands Financial Ombudsman (**CIFO**) has published the number of complaints received during the third quarter of 2021 (**Q3**).

CIFO received 77 complaints of which 46 were within its remit. Current accounts, other investments and other insurance were the top products complained about and in the main, complaints related to poor administration/delay, refusal of service and non-payment of claims.

Of the 86 complaints which were mediated/determined by CIFO in Q3, under half (40 per cent) were found in favour of the complainant with the remaining complaints (60 per cent) found in favour of the financial services provider.

The full report is available [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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