

UPDATE

Guernsey Revision of Laws

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The end appears to be in sight for one of Guernsey's largest regulatory legislative projects. In this update we explain the latest developments on the Revision of Laws Project

A revision of the Revision Project

Given the length of time that the Project has been ongoing, a quick re-cap may be justified. Back in November 2014 the Guernsey Financial Services Commission (**Commission**) published a discussion paper on the 'Revision of Laws Project'. Almost a year later Guernsey's government, the States of Deliberation (**States**), approved a Policy Letter recommending that Guernsey's regulatory laws be updated. These steps formed the beginning of a major legislative undertaking – to review and amend Guernsey's regulatory laws and underlying rules and regulations.

Guernsey's core regulatory framework is set out within five Laws covering the key areas of financial regulation - investment business, deposit-taking, insurance business, insurance intermediary business and fiduciary business. The Project set out to replace (or in the case of insurance/insurance intermediary business, amend) the existing regulatory laws with the aim of consolidating years of amendments, as well as to ensure compliance with international and EU standards, to ensure effective supervision and create efficiencies. Since 2014 the Commission has been spearheading the Project and has published numerous consultations and held discussions with industry on the proposals. Though delayed slightly by the Pandemic, draft legislation was published in May 2020 and the Project has progressed steadily ever since.

Investment Business, Deposit-taking and Fiduciary Laws

In August/September 2020 we saw the new Protection of Investors (Bailiwick of Guernsey) Law, 2020, the Banking Supervision (Bailiwick of Guernsey) Law, 2020, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 approved by the States, and also the States of Alderney and the Chief Pleas of Sark. Those laws subsequently received Privy Council approval and were registered with the Royal Court of Guernsey in December 2020.

The new Laws are **not** yet in force. It is expected that commencement ordinances will be proposed later this year (currently expected to take effect on 1 November 2021) to bring them into force.

Insurance and Insurance Intermediary business

Ordinances amending the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 have been published and the Commission has now conducted and concluded a consultation with industry to highlight any 'fatal flaws' in the proposed amendments.

These amendment Ordinances are proposed to be considered at the States meeting in September 2021 and currently scheduled to come into force at the same time as the other new Laws (1 November 2021).

Underlying Rules, Regulations, Codes and Guidance

Since finalising the new Laws the Commission's attention has, so far, been focussed on the various rules and regulations made under each of the existing regulatory laws, with consultation on the codes and guidance (and possibly also the rules and regulations issued under the Insurance / Insurance Intermediary Laws which have not yet been considered) to follow.

Some consolidation of the different rules and regulations for each industry sector is proposed, and whilst not fully reflected in the draft revised rules and regulations, we understand that the Commission's approach is to move towards producing consolidated rulebooks for each of the banking, investment and insurance sectors, similar to the Fiduciary Rules.

Banking consultation

On 16 March 2021 the Commission opened a consultation on proposed revisions to certain rules and guidance issued under the Banking Law. The Commission requested feedback on proposals to:

- require banks to use one of a number of specific accounting standards permitted by the Commission (likely to be IFRS, UK GAAP and US GAAP);
- update the existing disclosure requirements to require banks to make information on key metrics for liquidity and financial stability available (as well as their audited annual accounts which is already required), to align the requirements more closely with the Basel Principle;
- update the Commission's large exposure regime to bring it more fully in line with certain aspects of the updated Basel Framework and reduce concentration risk; and
- set an upstreaming limit of 100% of a Guernsey-established entity's Tier 1 Capital.

The above proposals only concern licensed institutions incorporated in Guernsey. This would include subsidiary banks incorporated in Guernsey but branches of institutions not incorporated in Guernsey fall outside the scope of these proposals.

The consultation closed on 11 May 2021 and we await the outcome from the Commission.

On 21 April 2021 the Commission announced three further consultation papers with responses requested by **17 June 2021**.

Replacement of Fiduciary Rules

The **first consultation** concerns the rules and regulations to be made in connection with the new Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020.

The proposal is for the current Fiduciary Rules (which only came into force on 31 December last year and have therefore had a recent overhaul) to be replaced with a new set of Rules that, though largely in the same form, will:

- repeal the Regulation of Fiduciaries (Annual Return) Regulations, 2017 and incorporate provisions into the new Rules;
- introduce rules relating to the new categories of licensee in the new Fiduciaries Law - primary or secondary licensees (effectively replacing the existing 'lead' and 'joint' licensee categorisations); and
- repeal the advertising restrictions contained within the Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012 that apply to personal fiduciary licensees.

'Discretionary exemptions'

The **second consultation** concerns the existing practice of applying for a 'discretionary exemption' under the current Fiduciaries Law when undertaking certain activity related to a fund structure or a controlled investment captured by the Fiduciaries Law.

The new Fiduciaries Law will introduce a welcomed new exemption for certain activities relating to 'ancillary vehicles' (providing that the Commission is notified).

In August 2020 the Commission published a discussion paper on 'ancillary vehicles' seeking feedback on the proposed types of entity and activities that could fall within the new statutory exemption. Some respondents to the discussion paper suggested that such entities and activities covered by the exemption

could be wider than those originally proposed by the Commission (for example, to cover single asset vehicles). Whilst taking on board the feedback, the Commission has retained a fairly narrow scope in the draft Rules relating to ancillary vehicles. As currently drafted, the exemption would apply to a general partner of a carried interest limited partnership or a co-investment limited partnership of a registered or authorised fund or to a general partner of a single investor vehicle (but not a single asset vehicle with multiple investors).

There has been overlap between the Protection of Investors Law and the Fiduciaries Law for a long time in this area and these changes should reduce the administrative burden and increase certainty of treatment under the Fiduciaries regime for private equity and similar structures.

Third consultation – review of statutory instruments

The **third consultation** concerns most of the rules and regulations made under the existing Laws to ensure consistency with the new Laws and continuing compliance with international standards.

Generally speaking, the Commission's approach has been to propose only minimal changes to the rules and regulations, recognising that widespread change could lead to placing an administrative burden on licensees. The revised rules and regulations are not intended to implement any policy change by the Commission and will replicate the existing rules and regulations with the intention that the substance, meaning and operation of the rules and regulations will remain the same.

The Commission has also taken the opportunity to eliminate obsolete rules, propose the suspension of rules requiring an overhaul (such as the Class A Scheme Rules) and to revoke rules where regulation is not required (such as revoking the Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994, meaning that licensees no longer have to notify the Commission when managing, administering or providing custody services in connection with a specific non-Guernsey collective investment scheme).

Further consultation on the Commission's published guidance and codes under the Laws is due to follow, although we would expect the Commission to adopt a similar approach with only minimal changes being suggested.

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