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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are arranged in a way that they seem to converge towards the top of the frame. A flag with red and white sections is flying from a tall pole in the center-right. The sky is a clear, pale blue. The bottom portion of the image is overlaid with a semi-transparent red rectangle containing white text.

# FinReg Update

Guernsey  
December 2021 to March 2022

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# Quick Fire Updates

## 1. Bailiwick mind and management - consultation

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The Guernsey Financial Services Commission (the **Commission**) has issued a consultation paper on 'Bailiwick Mind and Management' in relation to the investment and fiduciary sectors.

The proposal is to include new guidance in each of the Licensees (Conduct of Business) Rules and Guidance, 2021 and the Fiduciary Rules and Guidance, 2021 to clarify that maintenance of local mind and management is a relevant factor in the Commission's assessment of the prudent conduct of business of a licensee - one of the minimum criteria for licensing. The proposal is stated to be in line with the Commission's current practice and relates both to new licence applications and the ongoing retention of licences.

The consultation ([here](#)) closed on **21 March 2022**.

## 2. Professional indemnity insurance – consultation

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One of the ways the Commission fulfils its statutory function to protect the public against financial loss from persons carrying on finance business is by imposing a requirement that certain financial services businesses maintain professional indemnity insurance (**PII**).

As noted above, one of the minimum criteria for licensing is that business is conducted in a prudent manner. A licensee will not be regarded as conducting its business in a prudent manner unless it maintains an adequate level of insurance cover.

Significant changes in the PII market over recent years have had a negative impact on local licensees in that obtaining PII cover, particularly at the level required by the relevant rules, has become more difficult and premiums have increased significantly.

This consultation contains the key findings from the questionnaires issued by the Commission in late 2020/early 2021 to fiduciary, investment and insurance intermediary licensees regarding their PII arrangements. The consultation makes proposals for changes to the minimum regulatory PII requirements in order to ensure that those requirements remain fit for purpose and consistent with the minimum licensing criterion to conduct business in a prudent manner.

The consultation ([here](#)) closed on **14 February 2022**.

## 3. Suspicious Activity Reports (SARs)

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The Bailiwick of Guernsey's Financial Intelligence Unit (**FIU**) has issued guidance in relation to applications for its consent in respect of an act that may constitute a money laundering and/or terrorist financing (**AML/CFT**) offence according to relevant legislation.

The legal effect of the FIU's consent is that it provides a statutory defence to the applicable offence for the specific act. The statutory defence is only available where consent is obtained **prior** to a person undertaking the act which they anticipate could result in them committing a principal AML/CFT offence.

The guidance outlines the consent regime, expected responses, ongoing obligations, tipping off offences and also addresses some misconceptions with regards to the application for consent.

The guidance is available [here](#).

Our Legal Update is also available [here](#).

## 4. Regulatory enforcement

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The Commission has made a public statement and imposed financial penalties on a full fiduciary licensee and certain of its directors, money laundering reporting officer and compliance officer for failing to monitor and manage the financial crime risks associated with its customers as required by the relevant AML/CFT rules and regulations.

The Commission's findings spanned a significant period, including after 13 November 2017 when the maximum financial penalties for such failings were increased by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2018.

View the public statement [here](#).

Separately the Commission has imposed a substantial discretionary financial penalty ([here](#)) of £196,000 on an individual for failing to meet the minimum criteria for licensing together with a prohibition order ([here](#)) for a period of 5.6 years.

## 5. Sanctions and cyber risk

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The Commission is encouraging firms to prioritise their sanctions screening and assessment of sanctions risks. Firms should check whether they maintain any accounts or otherwise have any kind of relationship with all persons referred to in sanctions notices. If so identified, any funds, other assets or economic resources should be treated as frozen and reported in accordance with the law.

Firms involved in investment in countries involved in armed conflict should take care to ensure that investors are treated equitably, especially in terms of fair valuation and allocation of liquid and illiquid assets between investors.

Requests for a licence under the sanctions framework, ie permission to carry out an activity that would otherwise comprise a breach of a sanctions regime, can be made to the Policy & Resources Committee using its template licence application ([here](#)).

Specifically in light of the war in Ukraine, applications involving individuals, entities or investments connected with Russia are now ineligible for any of the Commission's fast-track regimes, and any such application must be accompanied by reputable legal advice confirming that the individuals and entities involved have no connection with sanctioned individuals and entities.

Further, firms are asked to ensure that they are familiar with the Commission's Cyber Rules and Guidance, 2021 ([here](#)) and in particular, have appropriate cyber security software, implement IT updates swiftly and encourage staff to exercise caution in emails and when on websites.

## 6. The Handbook - update

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The Commission has updated Appendix I of the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) by adding the United Arab Emirates (**UAE**) to FATF's list of jurisdictions under increased monitoring. Whilst Zimbabwe has been removed as a FATF jurisdiction, it remains on Appendix I as it is listed by other relevant external sources.

Firms are asked to review the updated Appendix I of the Handbook in order to assess the impact that these changes may have on their business, including whether the UAE's listing should be taken into account as a relevant risk factor when reviewing new and existing business relationships and within its transaction monitoring controls.

The updated Handbook is available [here](#).

## 7. Lasting powers of attorney

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The States of Guernsey has approved legislation permitting individuals to create lasting powers of attorney (**LPoA**) for the first time in Guernsey (a concept which already exists in Jersey and England and Wales).

With effect from 1 April 2022 an individual can appoint an attorney in advance of any loss of capacity to deal with their affairs (both financial and healthcare). The LPoA continues to have effect after that person loses capacity.

This is a significant change for Guernsey as previously a power of attorney would become invalid when the person who created it lost capacity and it would be necessary to obtain a guardianship order from the Royal Court.

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

## 8. Guernsey's insurance sector

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A strategic review of Guernsey's insurance sector, commissioned by the States of Guernsey, has been published to assist in the development, promotion and long-term success of the sector, both domestically and internationally.

The review notes there have been significant changes to Guernsey's economic environment since the last sector review was carried out in 2016. Not only has there been a global pandemic and uncertainty created by Brexit, but Guernsey has also seen a change of its own Government.

Contributors include local and off-island industry experts and stakeholders, and the review contains a number of key strategic recommendations for implementation by stakeholders.

View the sector review [here](#).

## 9. Data protection

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The deadline for local businesses that handle personal data to register or renew their existing registration with the Office of Data Protection (**ODPA**) has now passed (28 February 2022).

In other news, latest breach statistics reveal that 27 personal data breaches were reported during January and February 2022, the majority of which were due to personal data being sent to the wrong person by email and post.

Due to an improvement in the ODPA's breach reporting system, the published statistics now also provide the outcome for each breach, ie personal data sent to the wrong person by email resulted in *disclosure* of that personal data.

The full statistics for January and February 2022 are available [here](#).

## 10. CIFO

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The Channel Islands Financial Ombudsman (**CIFO**) has published the levy schemes for 2022 ([here](#)), together with its feedback ([here](#)) on its consultation paper concerning the proposed 2022 levy schemes ([here](#)). Notably no submissions were received in response to the consultation.

The levy schemes for 2022 are effective from 1 March 2022 for banks in both Guernsey and Jersey, and subsequently come into effect for other registered providers in June/July 2022.

The number of complaints received during the fourth quarter of 2021 (**Q4**) was 100, 66 of which were within CIFO's remit. Current accounts, other insurance and health insurance were the top products complained about, and in the main, complaints related to poor administration/delay, fees and charges and refusal of service.

Of the 75 complaints which were mediated or determined by CIFO in Q4, under half (37 per cent) were found in favour of the complainant with the remaining complaints found in favour of the financial services provider.

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

## 11. MO FinReg Forum

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If you would like to participate in our quarterly FinReg Forum, which provides 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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