

1. Notice Regarding the Modification of the Licensees (Capital Adequacy) Rules, 2021 for Certain Classes of Licensee

The Commission has today issued a notice setting out a modification of the Licensees (Capital Adequacy) Rules, 2021 for any licensee under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”) which does not have a physical presence in the Bailiwick, is administered by another licensee in the Bailiwick and which is a general partner, manager or investment adviser of a collective investment scheme authorised or registered under the POI Law.

The notice may be found in the “Other” section of the Investment > Legislation & Guidance page of the Commission’s website.

2. Occasional Staff Paper

Nick Royle, a Commission Analyst, in this paper, sets out some perspectives on how regulators - particularly those in larger jurisdictions - might help correct for market failings and encourage corporate entities and their financial backers to invest in ways likely to help the world deliver COP 26 climate change mitigation targets. He wrote the paper in a private capacity as a submission for a regulatory essay competition but we are happy to use our website to make it available to a wider audience. Whilst it provides a thoughtful account of how financial services regulators entrusted with a green mandate by their jurisdictions, might use the tools available to them to help create a more environmentally friendly private sector, his paper does not represent Commission or Bailiwick of Guernsey environmental policy. It merely constitutes an interesting contribution as to how, over the course of the next three decades, key jurisdictions might collectively move from words to deeds with regard to effective climate change mitigation measures.

Cos Money Grows on Trees: The Integration of Climate-Related Risks into Risk-Based Supervision

<https://www.platinumcompliance.co.uk/>

3. Commission Fees for 2023

The Commission plans to increase licence fees paid by firms from 1 January 2023 by 8.0% with the agreement of the Policy & Resources Committee.

On 20 July 2022, the Commission issued a consultation paper on the fee rates and administrative penalties to apply from 1 January 2023, which contained the following proposals:

an overall proposed increase in fees of 9%;

application and annual fees in respect of our increased responsibilities for firms licensed under the Lending, Credit and Finance legislative framework;

fees for consent requests to incorporate a non-regulated Protected Cell Company or Incorporated Cell Company;

fast track fees for additional elements to open-ended fast track funds;

updates to the returns in scope of late filing penalties; and

the creation of an explicit administrative penalty regime for returns submitted to the Commission that are materially inaccurate.

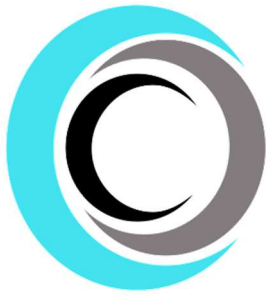
The consultation period ran for eight weeks, until 14 September 2022 and the Commission’s response to the feedback received as part of the consultation is available on our website.

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The Commission decided to proceed with a lower fee increase of 8%, rather than the 9% on which it had consulted because of the success which it has had over the past few months in recovering more of enforcement costs through the collection of the fines made under the enhanced fining powers granted to it by the States in 2017. The fact that we have been able, over the last twelve months, to recover more of our enforcement costs through fines, means that vast majority of firms which work hard to comply with the Bailiwick's laws do not need to have their fees increased so much. De facto, they are receiving a rebate as a result of the Commission's success collecting recent enforcement fines.

Speaking about the proposals, the Commission's Chairman, Julian Winser, said: "We have carefully considered the feedback received. We understand that all businesses are, like us, dealing with the worst inflationary environment for more than thirty years. Skilled regulators applying our laws sensibly are vital if the Bailiwick is to ensure a good outcome from MoneyVal. This means, as ever, we need to retain and recruit the talented staff necessary to authorise, supervise and investigate firms in a highly competitive market. This requires this fee increase."

The Commission intends to issue invoices for annual fees on 3 January 2023. An FAQ on what to expect from the annual fee process, including what licensees should do to ensure they receive their invoices in a timely manner, is available on the Commission's website.

4. AML/CFT Handbook Updates

Appendix H

The Commission has today updated Appendix H of the Handbook as a result of the FATF's announcement that it has added Myanmar to its list of jurisdictions subject to a call for action. Myanmar was previously on the FATF's list of jurisdictions under increased monitoring.

Appendix H of the Handbook identifies those countries and territories which the FATF has listed as high risk. Firms must apply ECDD measures to business relationships or occasional transactions where the customer or beneficial owner(s) has a relevant connection with a country or territory listed in Appendix H.

Appendix I

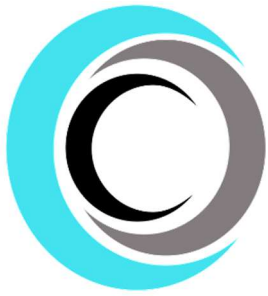
Additionally, the Commission has updated Appendix I of the Handbook as the FATF added Democratic Republic of Congo, Mozambique and Tanzania to its list of jurisdictions under increased monitoring and has removed Nicaragua and Pakistan. Democratic Republic of Congo, Mozambique and Tanzania were already present on Appendix I, and Nicaragua and Pakistan remain on Appendix I, as they are listed by other relevant external sources.

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Appendix I lists countries and territories that are identified by relevant external sources as presenting a higher risk of money laundering and/or financing of terrorism. Firms are encouraged to review the updated Appendix I in order to assess the impact that these changes may have on their business, including whether the amendments should be taken into account as a relevant risk factor when reviewing new and existing business relationships and within its transaction monitoring controls.

Chapter 4

The Commission has also amended guidance in Section 4.8 of the Handbook regarding liquidators registered with the Commission acting as the nominated firm responsible for investor CDD of suspended collective investment schemes authorised/registered with the Commission.

Updated and tracked versions of Appendices H and I can be found within the Notices, Instructions & Warnings page. An updated version of the Handbook can be found here.

The FATF page on High-Risk and Other Monitored Jurisdictions can be found here.

5. Consultation on 'six directorship' exemption for directors

The Policy & Resources Committee has today published a Consultation Paper seeking views on a proposed change to the requirements which affect some individuals acting as company directors, by way of business, in or from within the Bailiwick. The Commission encourages industry and stakeholders to contribute their feedback.

Acting as a director for any company in the Bailiwick, by way of business, requires directors to hold a personal fiduciary licence granted by the Commission under the Fiduciaries Law[1]. There are a number of exemptions to this requirement. By way of example,

some of these include when a director is the director of a local trading company based in Guernsey, when the person is a director of a company quoted on a recognised stock exchange; or when the company is supervised by the Commission; or when an individual holds directorships in the course of their duties as an employee of a licensed trust and corporate services provider.

One exemption under the Fiduciaries Law is the 'six directorship' exemption, which means individuals who hold directorships of six or fewer companies being directorships which are not subject to another exemption under the Fiduciaries Law, are not required to hold a personal fiduciary licence. They are however still subject to anti-money laundering and counter-terrorism financing obligations. In 2015, a MONEYVAL[2] report recommended measures should be introduced to ensure effective compliance with these obligations.

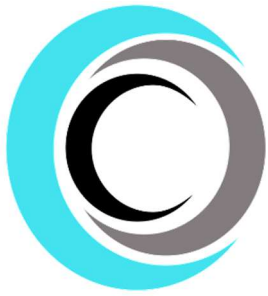
The Policy & Resources Committee, following discussions with the Commission, is proposing changes which would see a registration framework extended to directors who come under the 'six directorship' exemption. This is proposed as a practical and proportionate solution to deliver on the recommendation.

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It is envisaged that certain directors will be exempt from the registration requirements. In addition, the proposals will not directly impact individuals who rely on other exemptions under the Fiduciaries Law (including those cited above i.e. charitable directorships, directors of companies based in

Guernsey which are trading locally (such as local florists, grocers, restaurants), or employees of licensed fiduciaries acting as a director by virtue of their employment).

Further information, including details of proposed registration requirements and exemptions are included in the consultation document which can be found at <https://gov.gg/consultation-six-directorships-exemption>.

The Commission will be holding drop-in sessions during the consultation period at which interested parties can learn more about the proposals, details of which will follow in due course.

Comments can be sent in by emailing a response to policyandresources@gov.gg and AMLCFT@gfsc.gg by 16 January 2023.

[1] The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the "Fiduciaries Law")

[2] The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("MONEYVAL").

6. Update on the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

In July 2022, the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "Law") was approved by the States of Guernsey, the States of Alderney and the Chief Pleas of Sark. A Commencement Ordinance, passed last Friday, confirmed that the Law will come into effect in two stages.

Various provisions come into effect from 1 January 2023 which will allow the Commission to put in place its own Rules and guidance, and to invite applications for licensing. The Law will then come into full effect from 1 July 2023.

The new Law covers several different areas:

it introduces consumer protection and the regulation of credit provision and home finance across the Bailiwick for the first time;

it replaces the existing registration regime for non-regulated financial services businesses ("NRFBSs"), with licensing and regulation requirements;

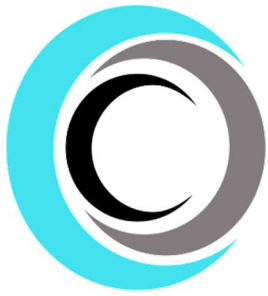
it introduces the regulation of virtual asset service providers ("VASPs") which brings the Bailiwick into line with international standards; and finally, it requires peer to peer and crowdfunding platforms in the Bailiwick to be licensed and regulated.

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Platinum Swift Updates

More information regarding the purpose and scope of the Law, and what it will mean for individuals and firms conducting activities covered by the Law, as well as consumers in the Bailiwick, can be found on our website.

The Commission is currently working through the responses to its Consultation Paper on its Rules and approach for regulating the sectors covered by the Law. The Commission will issue a feedback paper, together with the finalised Rules and guidance, a list of exemptions from the requirement to apply for and hold a licence, and frequently asked questions. This is intended to be published by the end of January 2023.

Information on the application process will be published alongside the final Rules, and the licence application window will open at that time. Early submissions will be encouraged with discounted application fees, to allow applications to be processed ahead of the commencement of the Law. From 1 July 2023, firms without a licence may not operate until the appropriate licence is in place.

Should you have any questions in the meantime, please contact the Lending, Credit and Finance team by email at LCF@gfsc.gg.

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