

Guernsey regulatory update - Q3 2022

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Date / [November 2022](#)

ESG

The Guernsey Financial Services Commission (GFSC) ran its [Sustainable Finance Week](#) in September and announced three initiatives that came into force from 20 September.

- [The Natural Capital Fund Regime](#) was launched and allows a regulatory designation for biodiversity and natural capital projects that positively contribute and/or reduce harm to the natural world. The regime has arguably more stringent criteria than those for the Guernsey Green Fund Regime.
- The list of criteria for the Guernsey Green Fund Regime has been expanded to include the “technical screening” criteria in the [EU Taxonomy for Sustainable Activities](#). The latter classifies and lists environmentally sustainable economic activities that meet the EU’s objectives of climate change mitigation and adaptation.
- [Anti-greenwashing guidance](#) for the investment sector. Any authorised or registered Guernsey fund must ensure that adequate disclosures are made to investors in respect of any environmental sustainability claims made in any of their information particulars or prospectuses. Any such disclosure complying with the EU’s Sustainability-related Financial Disclosure Regulations (SFDR), will be deemed compliant with the anti-greenwashing guidance – see [Sustainable finance: Guernsey’s new anti-greenwashing guidance](#) for further information.

Consumer Credit and Lending Law

A new credit, finance and lending law (CFL) was passed in July and is expected to commence from 1 January 2023 with a six-month transitional period until the end of June 2023. The law introduces four licensing regimes:

1. a consumer credit licence (Credit Licence) – to protect consumers from business lenders and unfair credit agreements;
2. a financial firms/business to business licence (FFB Licence) – aimed at businesses conducting a range of money services. A Credit Licence holder will not also need a FFB Licence (but not vice versa);
3. a virtual asset service provider’s licence (VASP Licence); and
4. a crowd funding, peer to peer platform or alternative non-bank credit/ intermediation licence (Platforms Licence).

Extensive exemptions are expected which will be set out in draft rules. A UK consumer credit licence holder will be exempted from the requirement to obtain a CFL Credit Licence. Consultation on the draft rules closed in September. We will be providing updates as the detail becomes more settled.

[Low Value Debt Relief](#) legislation was approved in September. This empowers a lay judge to relieve an individual’s low level of unsecured personal debt where that individual has no reasonable prospect of being in a position to repay such debts. This compliments the consumer protections in the CFL (above).

AML/CFT

- On 20 October 2022, Guernsey established an [Economic and Financial Crime Bureau \(EFCB\)](#) to investigate serious and complex economic crime, money laundering and to recover the proceeds of crime. The Bureau is an independent and autonomous authority consisting of criminal investigation teams, a civil recovery team, a specialist investigatory advisory team and a case

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development team. The Financial Intelligence Unit (formerly the Financial Intelligence Service) now forms part of the EFCB and receives and analyses Suspicious Activity Reports. The Bureau acts as the Law Officers' agent for mutual legal assistance purposes and can gather and provide evidence to support certain overseas investigations.

- The [Beneficial Ownership \(Miscellaneous Amendments\) Guernsey Law, 2022](#) came into force in July. Although approved by the States back in June 2020, Covid delayed its implementation. The changes include
 - New definitions of *regulated and non-regulated relevant legal persons (RRLP and NRRLP)*. A RRLP is a person administered or controlled or operated by a regulated person or has a resident agent which is a regulated person. These definitions clarify that the resident agents of unregulated entities are the focus of the Registrar of Beneficial Ownership. A regulated entity will have a regulated resident agent and already be subject to separate AML duties to identify its beneficial owners.
 - The Registrar has clearer powers to require information on nominee relationships for non-regulated relevant legal persons.
 - The grounds for disqualifying a resident agent have been expanded.
 - The Director of Revenue Services and the relevant divisions of the EFCB are empowered to inspect the Beneficial Ownership Register.
- Annual Validations
 - Regulations have clarified that a limited partnership may be struck off for failure to submit its annual validation or for failures relating to substance and income tax requirements.
 - A company's annual validation will now need to provide information on its resident agent regardless of the type of resident agent. Previously, the agent's information was only required where the resident agent was a director without a fiduciary licence. Separately, a non-supervised company must now disclose if it (1) owns a "High Value Asset" – roughly one with a market value greater than £250K – and its location (real property already had to be disclosed); and (2) whether the non-supervised company controls any express trusts.

Guernsey Revenue – Substance

- The temporary framework that was put in place due to COVID-19 travel restrictions has been withdrawn for accounting periods commencing on or after 1 November 2022. Boards are reminded that physical attendance on island is expected for a range of tax and substance reasons.
- [Income Tax \(Guernsey\)\(Amendment\) \(No.2\) Ordinance 2022](#) – wide ranging changes including a new "boiler plate" criminal offence for consenting or conniving directors/officers of companies and extended to officers/partners of other types of entities.

Other GFSC

- Professional Indemnity Insurance requirements for licensees have been clarified in amendments to the following new rules:
 - [The Fiduciary Rules and Guidance, 2021](#)
 - [The Licensees \(Capital Adequacy\) Rules and Guidance, 2021](#)
 - [The Insurance Intermediaries Rules and Guidance, 2021](#)
 - [The Insurance Managers Rules and Guidance, 2021](#)
- Transitional provisions will enable licensees to make any necessary changes to comply with the amended rules at the point at which their insurance renewal falls due. The GFSC has exempted the majority of investment licensees from the requirement to fully fund any excess payable under the policy.
- [Specific Discretionary Exemptions may need renewal](#). The GFSC [imposed](#) three-year expiry dates on specific discretionary exemptions granted on or after 1 October 2019. Discretionary exemptions granted or renewed after this date will begin to expire from October 2022. Exempted persons should apply a month in advance of any expiry to the GFSC for renewal. Please note if an exemption is no longer applicable then there is still a duty to notify the GFSC of this disapplication.
- [GFSC consulted on increases in 2023 Fees](#). An overall increase of 9% was proposed

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