NEWGATE COMPLIANCE

# Newgate Swift Updates

**1. 10th July 2023 – Director Registration Regime**

Further to legislation passed by the States of Guernsey last week, the Commission has launched today a new director registration regime for individuals holding certain categories of directorships following amendments to the Criminal Justice (Proceeds of Crime) Law, 1999 and an amendment to the Regulations of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 Law. These establish a registration regime for individuals who use the "up to six directorships" exemption from fiduciary licensing where no other exemption from registration applies.

Individuals who currently use the "up to six directorships" exemption are required to comply with the anti-money laundering and countering terrorist financing ("AMLCFT") measures in Schedule 3 to the Proceeds of Crime Law, but they are not supervised. Under this registration regime there is a reduced set of AMLCFT obligations for them to comply with. The registration regime will enable the Commission to supervise their compliance with these requirements.

The development of the regime has considered feedback from consultations issued late, last year. It affects Bailiwick residents who use the exemption in the Fiduciaries Law, which allows them to hold directorships of six or fewer companies which do not fall under any other exemptions from licensing in the Fiduciaries Law or exemptions from registration in Schedule 5 to the Proceeds of Crime Law. This means that the director registration regime will not directly impact individuals who rely on other exemptions under the Fiduciaries Law including unrewarded directors (such as recreational or charitable directorships), directors of companies based in Guernsey which are trading locally (such as local florists, grocers, restaurants), employees/officers of licensed trust and corporate service providers holding directorships in the course of their duties (such as licensed company administrators, fund administrators), directors of supervised bodies (such as authorised/licensed collective investment schemes, insurers and insurance managers) and directors of prescribed businesses (such as estate agents and law and accountancy firms).

Individuals qualifying for registration have until 1 October 2023 to register. Details on the regime which explain who should register, the application process for registering and

the regulatory obligations upon them are available through the Director Registration Regime page.

The Commission is hosting workshops over the summer on the registration regime which will include information on how to register and an explanation of their AMLCFT obligations. These workshops are being held at the Commission's offices on Thursday 20 July, Wednesday 16 August and Friday 15 September from 9am to noon. Those wishing to attend are invited to contact the Commission on AMLCFT@gfsc.gg to book a place.

(Note: The amendments to the Fiduciaries Law and the amendments to Proceeds of Crime Law, which were passed on 5 July 2023, will shortly be reflected within the consolidated versions on the Guernsey Legal Resources website. In the meantime they can be found via the following links: The Fiduciaries Law, The Proceeds of Crime Law)

To further take into account the impact of the registration regime, in December 2022, the Commission also consulted on Exemptions of Directorships Connected to Authorised and Registered Collective Investment Schemes and today publishes its feedback on that consultation.

Following that consultation, new regulations have been made providing for the exemption from licensing under the Fiduciaries Law of the activity of acting as a director of certain companies connected to registered or authorised collective investment schemes. These regulations extend the scope of licensing exemption by introducing a revised version of the previously proposed exemption for Collective Investment Scheme-connected directorships and by introducing three additional, new categories of director exemption. The effect of this broadening of available exemptions under the Fiduciaries Law, is to reduce the extent of directorship activity using the "up to six" exemption, and hence reduce the number of directors who will be required to register with the Commission.

## 2. Updates to the AML/CFT Handbook

The Commission has today issued an updated Handbook on Countering Financial Crime and Terrorist Financing following consultations on rules and guidance in relation to an independent audit function, business risk assessments, virtual asset service providers and additional information disclosures for licensed trustees and partners.

We have also updated Appendix I of the Handbook which lists jurisdictions identified by external sources as presenting higher risk of money laundering and terrorist financing reflecting the Financial Action Task Force's updated list of jurisdictions under increased monitoring, which includes Cameroon, Croatia, and Vietnam. Some of the other sources used in the compilation of Appendix I have updated their assessments which have led to the addition of Chile, Curacao, and Macau and removal of Belize, Kiribati, Morocco, and Rwanda.

We are also issuing feedback on the consultations which can be found on the Commission's Consultation Hub.

The clean and tracked version of the Handbook (including Appendix I) can be accessed via the Handbook page and the Notices, Instructions & Warnings page.

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

We have taken the opportunity to update legal references in the Handbook following revisions to the main supervisory laws, and to reflect the change name of the Financial Intelligence Unit and establishment of the Economic and Financial Crime Bureau.

## 3. Thematic Review of Unclaimed Client Money of Collective Investment Schemes

The Commission has today issued its report on the Thematic Review of Unclaimed Client Money of Collective Investment Schemes ("the Thematic"). The Thematic was undertaken in order to gain a better understanding of the value of unclaimed and unallocated monies in the collective investment scheme industry in Guernsey and how these monies are dealt with by the relevant parties. The Commission engaged with 41 Designated Administrators, which included the vast majority of Designated Administrators regulated by the Commission as at July 2022, and all active Guernsey collective investment schemes were within the scope of the Thematic.

The Commission identified that, as a proportion of the collective investment scheme industry's overall NAV, Unclaimed Money does not represent a significant percentage but it is recognised that the scope of the Thematic did not include surrendered collective investment schemes where, for example, all monies other than unclaimed monies may have been distributed. Further, whilst industry-wide the total unclaimed money figure is proportionately small, it may not be small for the individual investors involved.

The Commission also identified that unclaimed money is not dealt with in a consistent manner within the collective investment scheme industry and this may be as a result of limited guidance and rules relating to this matter. The Commission will consider issuing a consultation paper in due course which will seek industry's views on key points which may be covered in any future guidance or rules.

A copy of the Thematic Review is available via the following link: **2023 Thematic Review of Unclaimed Client Money of Collective Investment Schemes.pdf**

The Commission would encourage licensees and collective investment scheme boards to consider the contents of the report, in particular how the example of good practices may be applied.

## 4. Commission consults on Fees for 2024

The Commission today launches a consultation paper on proposals for increasing the licence fees paid by firms. The consultation period will close on Wednesday 20 September.

The Commission is consulting on an overall increase in fees of 7.3%. Other specific proposals relating to fees that are outlined in the consultation paper are:

•a rebalancing of fees within the insurance sector on request of the industry body with the aim of making Guernsey's Special Purpose Insurance sector comparable with others;

•an increase in the regulatory fee when operating an investment exchange within the Bailiwick; and

•an update to the fees for virtual asset service providers within an Actively Managed Certificate structure.

As noted in our 2022 and 2023 Fee Consultation Papers, our internal financial modelling suggested that the Commission would be capable of sustaining its operations over 2023 and 2024 with fee increases benchmarked to inflation. In line with those calculations the Commission is proposing an increase in overall fees of 7.3%, which is 1% below the rate of Guernsey inflation as at March 2023. Our assessment of our requirements for 2024 have also taken into account the need to retain and recruit skilled staff and develop the IT and data management systems and infrastructure necessary to ensure the Commission can continue to meet its regulatory obligations. Speaking about the proposals, the Commission's Chairman, Julian Winser, said: "The Commission seeks to contain the level of fee increases beyond those necessary and our fee increases historically, and in 2024, remain significantly lower than our peer jurisdictions. However, the Commission is not immune to rising levels of inflation and we continue to need to be able to retain and recruit talented staff in an unusually competitive financial services market. We are proposing these fees, being slightly under the rate of inflation, on the basis that the Commission aims through 2024 to use reserves to cover some portion of its ongoing costs, including our technology investment programme."

## 5. Finance Sector Code of Corporate Governance amended to include Lending, Credit and Finance Law

Following the full implementation of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the LCF Law), the Commission has amended the Finance Sector Code of Corporate Governance (the Code) so that it is clear that it applies to firms licensed under the LCF Law. The application of the Code to LCF licensees was highlighted during the Commission's LCF consultation.

The list of regulatory laws on pages 5 and 6 of the Code has been amended to include the LCF Law, as has the narrative on page 7 noting the amendment. No other changes have been made**.**

## 6. Thematic Review of managing the risk posed by Politically Exposed Persons

The Commission has today issued its report on the thematic review of the effectiveness of firms' monitoring of, and compliance with, requirements for managing the risks posed by Politically Exposed Persons ("PEPs"). We undertook onsite inspections to 30 firms across the sectors with the largest exposure to PEPs. In all of the 170 PEP files which were reviewed, the relationships had an appropriate risk rating, but some firms were less proficient in documenting their consideration of the risks presented by the PEP. Whilst it is mandatory to treat relationships with foreign PEPs as high risk, firms should ensure that that their risk methodology differentiates between foreign PEPs and domestic PEPs as the type and extent of risk present will be different, and therefore ECDD may not be appropriate for a domestic PEP.

A copy of the thematic review is available via the legislation and guidance page or via this link: [PEP Thematic Public Report.pdf (gfsc.gg)]

The results showed that the controls employed by firms to mitigate PEP risk were effective, with only three of the 30 firms requiring risk mitigation programmes to remediate identified issues. We noted many examples of good practice, and it was encouraging to note the strong performance by fiduciaries specifically in regard to the risk assessment of PEPs. This is likely due to the nature and complexity of fiduciary service offerings which allow for a deeper understanding of the risks present in a relationship. Nevertheless, six areas for improvement were identified where firms could improve their policies, procedures, and controls.

We will be holding an industry event in the Autumn of 2023 to discuss the findings of both this thematic review and the thematic review of business risk assessments. Invitations will be sent out in due course. In the meantime, all firms are encouraged to consider the report's contents, particularly when updating and revising their policies, procedures, and controls on PEPs.