



ADVISORY
Industry Information

Revision of Key Financial Services Regulatory Laws in Guernsey

November 2021

Introduction

As part of a review and update of Guernsey's regulatory laws, the following new regulatory laws (the "Regulatory Laws") came into effect on 1 November 2021:

- The Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the "New POI Law")
- The Banking Supervision (Bailiwick of Guernsey) Law, 2020
- The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the "New Fiduciaries Law")
- The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the "New Enforcement Law").

Amendments to the Insurance Business (Bailiwick of Guernsey) Law, 2002, and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 also came into effect on 1 November 2021.

These updated Regulatory Laws follow a long period of review and consultation and aim to:

- standardise certain aspects across the Regulatory Laws, such as enforcement, in order to seek consistency and therefore efficiency;
- ensure that the Regulatory Laws comply with wider European and international standards, in particular the Basel Core Principles, the GIFCS Standard on the regulation of trust and company service providers, the IOSCO Principles and MiFID II, and
- distinguish between supervision and enforcement.

It was not intended that any significant changes be made by the Regulatory Laws beyond those required for the above aims, but we note in this briefing some of the key changes which will be of particular interest to the investment and fiduciary industries. This briefing is a high-level summary, and our team will be happy to discuss any particular queries in detail.

Rules and Guidance

The Guernsey Financial Services Commission ("GFSC") has also published various updated rules, codes and guidance applicable to the Regulatory Laws, including rules regarding various fund regimes, the prospectus rules, conduct of business rules and capital adequacy rules. These also came into effect on 1 November 2021, and can be found [here](#).



New Categories of Roles for a Licensee - New POI Law

As part of the standardisation, the Regulatory Laws now use revised terminology for all industry sectors. These new concepts are included in the overall concept of a holder of a 'supervised role'. 'Supervised role' is broken down into different sub-categories, being 'vetted supervised role', 'approved supervised role' and 'notified supervised role'. However, the actual descriptions of persons and roles that fall into these sub-categories vary depending on the relevant industry sector, so that each industry sector can comply with its own applicable international regulatory standard.

It should be noted that the notification requirements relating to supervised roles, including notification of, approval of, or no objection to, an appointment to a supervised role or notification of a person ceasing to hold a supervised role, vary between the type of supervised role and relevant industry sector.

The following are the subcategories of supervised role under the New POI Law:

- 'vetted supervised role' which covers the key roles of director, 'controller', partner, money laundering reporting officer, money laundering compliance officer and compliance officer;
- 'approved supervised role' which is defined by reference to regulations (which have not yet been published); and
- 'notified supervised role' which covers a 'significant shareholder', 'other supervised manager' or company secretary.

Vetted Supervised Role Definitions

"Controller" for these purposes is either (i) a managing director or chief executive of the licensee or of any other company of which the licensee is a subsidiary, or (ii) a person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of the licensee or of any other company of which the licensee is a subsidiary, or (iii) is a "shareholder controller", or (iv) is an "indirect controller".

A "shareholder controller" means a person who, alone or with associates is entitled to exercise, or control the exercise of, 15% or more of the voting power of the licensee or of any other company of which the licensee is a subsidiary.

An "indirect controller" means, a person in accordance with whose directions or instructions any director of the licensee or any director of any other company of which the licensee is a subsidiary, or any controller of the licensee, is accustomed to act. This includes a person who has a direct or indirect holding in the Licensee or in any other company of which the licensee is a subsidiary, which makes it possible to exercise significant influence over the management of the body.

Notified Supervised Role Definitions

A "significant shareholder" is a person who, alone, or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power of the licensee or of any other company of which the licensee is a subsidiary.

An "other supervised manager" is a person, not being the chief executive, who exercises (under the immediate authority of a director) day-to-day managerial functions in relation to the licensee's regulated business, or any other role that allows the Licensee to satisfy the criterion for licensing that the business is directed by at least two individuals, but excludes anyone whose role is a "vetted supervised role" or an "approved supervised role".

New Categories of Roles for a Licensee - New Fiduciaries Law

Interestingly, the subcategories of supervised role under the New Fiduciaries Law are reversed, with 'approved supervised role' covering the roles of director, 'controller', partner, money laundering reporting officer, money laundering compliance officer and compliance officer, and 'vetted supervised role' being defined by reference to regulations (which again, have not yet been published).



Skilled Person

Each of the updated Regulatory Laws now contains the concept of a 'skilled person' (in place of the previously used 'inspectors'). The GFSC has the power to appoint or require the appointment of a 'skilled person' to investigate and report to the GFSC on the nature, conduct or state of the business (or any particular aspect of that business) of, or the ownership or control of, a licensee and/or any person holding a Supervised Role in respect of a licensee, together with certain associated parties of a licensee.

Re-categorisation as primary and secondary licensees under the New Fiduciaries Law

The New Fiduciaries Law has replaced the concept of 'lead licensees' and 'joint licensees' with new concepts of 'primary licensees' and 'secondary licensees'. From 1 November all 'lead licensees' are automatically re-categorised as 'primary fiduciary licensees' and 'joint licensees' are re-categorised as 'secondary fiduciary licensees', unless they have informed the GFSC otherwise in accordance with a notice published by the GFSC on 15 September 2021.

Enforcement powers of the GFSC

The Regulatory Laws introduce a distinction between the GFSC's supervisory powers and its enforcement powers. Over the course of recent years, the GFSC has sought to delineate its supervisory and enforcement powers, in line with international practice, and to this end introduced its dedicated Enforcement Division in 2013. The GFSC's sanctions and other enforcement powers have been removed from the separate laws covering each industry section and codified in a single law - the New Enforcement Law - to allow for consistency in approach to enforcement across the Regulatory Laws. One of the key purposes of this change in approach is so that it is clear to a person whether the GFSC is communicating with them in the context of supervision or enforcement. The GFSC can require third party connected persons such as auditors, accountants and trustees to attend meetings without seeking permission from the licensee.

Power to issue directions

While the GFSC had powers under the existing laws to impose directions on a person, the scope was relatively narrow.

Under the updated Regulatory Laws, the GFSC's power to issue directions has been widened, and in relation to the New POI Law, such power has now been introduced. The GFSC may, at any time, by notice in writing, require a 'directed person' to do or not do anything that the GFSC may believe necessary or desirable in the interests of the public or the reputation of the Guernsey as a finance centre. The scope of persons who can be a 'directed person' is wide, and may include (among others), a licensee, registered collective investment scheme, or other person carrying on controlled investment business. It also extends to include any holder of a supervised role, employee or officer thereof, or of such person's administrator or trustee.

Electronic communication

The Regulatory Laws have been updated to reflect modern practice in communication, in particular, allowing notices to an 'electronic address' and submission of documents in electronic form.

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