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# FinReg Update

Guernsey – Q3 2020



# Quick Fire Updates

## 1. COVID-19: Financial support to continue for businesses impacted by restrictions on travel

The States of Guernsey (the **States**) has advised that, while government-funded support cannot be provided long-term, the payroll co-funding scheme will continue until the end of the year to support those sectors that are more reliant on travel activity.

Eligible businesses can apply for either 80 per cent or 100 per cent of the minimum wage for employees depending on the extent to which it is impacted.

Affected businesses that are not eligible are encouraged to look to other sources to provide financial support, such as bank borrowing.

## 2. COVID-19: Increased financial and security risks

The Guernsey Financial Services Commission (**GFSC**) has re-published the Financial Action Task Force (**FATF**) guidance paper regarding COVID-19 related money laundering and terrorist financing risks (the **Report**).

A particular risk identified in the Report for the offshore world is around ensuring that the innovative methods adopted to overcome the difficulties of verifying customer due diligence and the validity of certain transactions do not undermine the high standards applied in normal times.

The Report provides steps that member countries can take to ensure domestic co-ordination and improve communication but, ultimately, the buck stops with the organisations and individuals involved in financial services and the risk frameworks they apply.

The GFSC has also recognised that there are increased information security risks as a result of licensees being unable to (or choosing not to) operate in their traditional office space with the acceleration of working from home which has followed the pandemic. The GFSC published guidance on 7 July 2020 for licensees on information security risks that can arise as a result of WFH. The advice itself is predominantly practical steps that can be taken for individuals who find themselves working from home. The GFSC stresses that this is to be used as an "interim reference" rather than as official guidance, however, it is an indication that the GFSC is aware of the practical realities of the current landscape and would presumably take them into account as part of its enforcement regime.

View the guidance [here](#).

## 3. Approval of the Bailiwick's supervisory and regulatory laws

The States approved the draft legislation amending certain of Guernsey's supervisory and regulatory laws on 18 August, namely:

- the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020
- the Protection of Investors (Bailiwick of Guernsey) Law, 2020
- the Banking Supervision (Bailiwick of Guernsey) Law, 2020 and

- the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020

The legislation has been submitted to the Privy Council for formal approval, ie Royal Assent and is expected to come into effect within the next 12 months.

## 4. GFSC's Annual Report and Accounts 2019

The GFSC has published its annual report and accounts for 2019 providing an overview of the activities undertaken over the previous year together with a detailed analysis of its income, expenditure and overall financial position.

According to the report, the level of economic activity in Guernsey was solid, albeit there were fewer applications than in 2018.

The GFSC has continued to apply its risk-based PRISM approach to supervision resulting in 270 Risk Mitigation Programme actions over the 4,823 entities regulated by the GFSC with 243 being satisfactorily concluded (broadly similar to 2018).

The number of enforcement actions open at the end of 2019 remained the same as at the beginning of the year (13), however 8 cases were concluded during the year with only 4 leading to public sanctions (with a three further cases being settled by way of private warnings and one case being discontinued).

View the full report [here](#).

## 5. Amendments to the Handbook

The GFSC has made a number of amendments to the Handbook to reflect Guernsey's National Risk Assessment on money laundering and the financing of terrorism (published in January 2020, [here](#)).

The changes, which include two new Appendices to the Handbook (Appendices H and I), aim to provide additional guidance to assist firms identify high-risk countries and territories for AML and CFT obligations. The intention is that the GFSC will update those Appendices shortly after FATF updates its lists (usually three times a year).

The revised Handbook ([here](#)) is effective from 19 June 2020.

## 6. Online submissions

The GFSC has upgraded its online PQ Portal, Online Submissions and Terms and Conditions (**T&Cs**).


Of particular note is the ability to register for a new account by agreeing to the T&Cs online, replacing the Online Services Agreement, which originally required a wet ink signature and more recently a scanned copy of the original signed agreement.

View [here](#) for further information.

## 7. Exit interviews for MLROs and MLCOs to continue

The GFSC is to continue conducting exit interviews for individuals holding the position of MLRO and/or MLCO with a bank or fiduciary firm until the end of December 2020. This practice is also





being extended to individuals holding those roles in both the investment and legal sector.

The pilot initiative, which was rolled out at the beginning of the year, has proven useful and has provided the GFSC with a greater understanding of these particular roles, their responsibilities and the challenges faced in the fight against financial crime.

View the announcement [here](#).

## 8. Thematic review on source of funds/wealth

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The GFSC has issued its report on the thematic review of source of funds/wealth in Guernsey's private wealth management sector, which was undertaken during the second half of 2019.

The report provides findings from a broad spectrum of large and small firms active in Guernsey's financial services industry and shows a generally good level of pro-active compliance by firms. 47 firms took part, including private banks, trust and corporate service providers, investment managers and lawyers. Of these, remediation programmes were set for 6 firms where there were deficiencies in establishing and understanding the source of wealth/funds. One firm was referred to the enforcement division due to the deficiencies being so severe.

From its conclusions, it is clear that the GFSC sees its current risk-based approach as the most effective for fighting the threat of money laundering in high-risk sectors.

View the report [here](#).

## 9. GFSC fee rate proposal for 2021

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Consultation to increase licence fees by 2.1% across all sectors, based on Guernsey's RPI, and the introduction of a £500 fee for fast track applications, has now closed (15 September).

View the consultation [here](#).

## 10. GFSC's enforcement process compliant with licensee's right to a fair trial

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The Royal Court has struck out a claim against the GFSC alleging that the enforcement process it adopted was contrary to human rights, primarily the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights.

The GFSC had initially found that the individual concerned did not satisfy the minimum standards required by those carrying out regulated activities and, after investigating, imposed a financial penalty and prohibition order. The individual chose not to bring an appeal within the given period and subsequently brought a claim seeking damages, alleging that the GFSC's decision-making process was flawed. The claim was struck out in court.

While an unusual case, the decision should prove a useful reminder for licensees that they need to engage with any allegations made against them during the enforcement process.

View our Legal Update [here](#).

## 11. GFSC Enforcement

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Financial penalties have been imposed by the GFSC on a local licensee for material contravention of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and three individuals for failing to meet the minimum criteria for licensing under that law (further details available [here](#)).

A financial penalty has also been imposed on a local licensee as a result of historical failures to meet the minimum criteria for licensing under the Regulation of Fiduciaries, Administration Business and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 and, in another case, on an individual licence holder, together with a prohibition order (further details [here](#) and [here](#)).

## 12. Changes to Guernsey's beneficial ownership regime

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The States has approved proposals to amend the legal framework relating to beneficial ownership. These amendments provide much needed clarity in certain areas, and 'plug' any gaps, which have been identified in the current beneficial ownership regime since the law, namely the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, was enacted.

View our Legal Update [here](#).

## 13. Changes to Guernsey's Banking Deposit Compensation Scheme

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Guernsey's Banking Deposit Compensation Scheme has been amended with effect from 21 May 2020 to reflect compliance with certain of the core principles issued by the International Association of Deposit Insurers (IADI). While not mandatory, compliance with those core principles is considered to 'stand the Bailiwick in good stead in future international reviews by parties such as the International Monetary Fund (IMF)'.

View our Legal Update [here](#).

## 14. Data protection – EU-US Privacy Shield

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The Court of Justice of the European Union (CJEU) has ruled that the EU-US 'Privacy Shield' is invalid. While the Bailiwick is currently recognised by the European Commission as an adequate jurisdiction for the purposes of the General Data Protection Regulation (GDPR), meaning that personal data can flow freely between the Bailiwick and the EEA, the CJEU decision will undoubtedly have an effect on cross border dealings with the US.

Local organisations are asked to take the steps outlined by the Office of the Data Protection Authority (ODPA) to ensure that they have proper safeguards around any data transfers that rely on either the EU-US Privacy Shield or EU 'Standard Contractual Clauses' (a set of terms and conditions organisations use to protect personal data transferred outside the EEA).

Further information, including the recommended steps, is available [here](#).



## 15. Data Breaches

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Latest figures reveal that 64 personal data protection breaches were reported to the ODPa in the four months leading up to 30 June 2020, the majority of which were accidental being data sent to the wrong recipient.

While the number of reported breaches remains consistent, the Data Protection Commissioner would like organisations to review their procedures to ensure that there are not any breaches occurring that the ODPa should be advised of.

## 16. CIFO Annual Report 2019

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The Channel Islands Financial Ombudsman (CIFO) has published its annual report for 2019, its fourth year in operation. CIFO has continued to see an increase in complaints about financial services being referred to it – 82% more in 2019 than in 2016, a high proportion of which were resolved by mediation rather than a binding decision from the courts.

View the full report [here](#).

## 17. Mandatory Disclosure Rules

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The Mandatory Disclosure Rules are now expected to be in place in Guernsey by the end of the year, imposing reporting obligations for intermediaries who are promoters or service providers for 'Reportable Arrangements' that meet the trigger threshold.

There are practical steps that should be taken now, including undertaking internal due diligence, developing training and policies and procedures to identify Reportable Arrangements, checking client terms and conditions and/or privacy statements and developing new procedures for collecting the required information and reporting to the Guernsey Revenue Service.

View our Legal Update [here](#).

## 18. LIBOR transition

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The FCA has published a new webpage ([here](#)) for firms getting ready for the LIBOR transition, which it will update periodically between now and the end of 2021, after which firms can no longer rely on LIBOR.

## 19. MO FINREG FORUM

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

## Contacts

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