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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades against a clear blue sky. A red flag is visible on one of the buildings. The bottom portion of the image is overlaid with a dark red semi-transparent rectangle containing white text.

# FinReg Update

Guernsey

January to March 2023

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# Quick Fire Updates

## 1. Lending credit and finance - update

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The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) is now in force (effective **1 January 2023**), with full implementation from **1 July 2023**. The Guernsey Financial Services Commission (the **Commission**) has published the final rules and guidance, which underpin the LCF Law, together with a notice setting out the various class exemptions. It has also helpfully published a series of FAQs [here](#).

The Commission has been accepting licence applications from **1 February 2023**. The application forms are available [here](#).

For an overview of the LCF Law, including most recently the licensing process, visit our dedicated 'Lending, Credit and Finance Hub' [here](#).

## 2. General insurers - consultation

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The Commission has issued a consultation on proposed new rules for retail general insurers, eg those offering insurance coverage for house contents and health costs. The current insurance business rules do not differentiate between retail and wholesale general (re)insurance and as such need to be expanded or made more specific to address the particular risks presented by retail insurance.

The proposed amendments include:

- increasing the minimum capital requirement for retail general insurers under the Insurance Business (Solvency) Rules and Guidance, 2021 from £100,000 to £250,000 (the current figure not having changed since 1986);
- increasing the minimum capital requirement for insurance managers servicing retail general insurers from £25,000 to £100,000;
- greater requirements for independent non-executive directors; and
- requirements to ensure managers and auditors who service retail general insurers have the necessary skills.

The consultation also includes a discussion paper on whether a policyholder protection scheme should be established in the event a Guernsey licensed insurer is unable to meet its liabilities to retail general insurance policyholders.

The consultation ([here](#)) closes on **1 June 2023**.

## 3. Amendments to Proceeds of Crime Law - consultation

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The Commission has issued a consultation on proposed amendments to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and associated rules and guidance in the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**).

The proposals are:

- to introduce a requirement for firms to establish an independent audit function (where appropriate, having

regard to the money laundering and terrorist financing risks, and the size and nature, of their business) to test the adequacy and effectiveness of the firm's policies, procedures and controls for AML/CFT;

- to introduce a requirement for a firm's business risk assessment to consider the money laundering and terrorist financing risks to their business presented by the main predicate offences identified within the Bailiwick's national risk assessment; and
- to develop the regulatory framework for virtual assets service providers, to include information requirements for virtual asset service transfers, the introduction of a £1,000 threshold on virtual asset transactions over which customer due diligence will be required, and for the definitions of 'funds' and 'property' to specifically include virtual assets.

The consultation ([here](#)) closes on **25 April 2023**.

## 4. Financial crime returns - consultation

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The Commission has issued a consultation on proposed new rules to make filing of the following existing financial crime returns mandatory:

- the annual financial crime risk return from all licensed firms;
- the annual intermediary multi-scheme return by administrators of authorised and registered collective investment schemes; and
- the quarterly financial flows return completed by banks.

The effect of making the filing of these returns mandatory is that they will fall within the Commission's administrative financial penalties regime for late filings and inaccurate submissions.

The consultation ([here](#)) closed on **27 March 2023**.

## 5. Trading Standards – new legislation

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The States of Guernsey (the **States**) has approved the Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023 (the **TS Ordinance**), which includes wide ranging provision for consumer protection and fair trading in relation to the provision of services and goods. The TS Ordinance is largely based on, and consistent with equivalent UK legislation, subject to necessary modifications.

The TS Ordinance is not yet in force (date to be confirmed). The Trading Standards Service have confirmed that the intention is for the TS Ordinance to come into force later this year and that guidance will be issued prior to its commencement. A separate briefing on the TS Ordinance will be published in due course.

## 6. Competition and Regulatory Authority - judgment

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The Royal Court of Guernsey has issued its judgment allowing an appeal, the first to be heard, under the Competition (Guernsey) Ordinance, 2012.

The judgment ([here](#)) includes commentary in relation to non-compete restrictions and about the approach to regulatory appeals generally.

## 7. Commission to introduce two-factor authentication

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The Commission will be implementing two factor authentication (2FA) on its online portals and has issued a guide ([here](#)) for any user who has not yet amended their account security.

Users are required to set up 2FA on their accounts as soon as possible, failing which *email* 2FA will be enabled automatically from **31 May 2023**. Users relying on this should ensure the email address attached to a User Profile is correct.

## 8. Russian sanctions - update

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On 21 March 2023, the UK government introduced new measures to prevent Russia from accessing UK trust services. The new UK Russia sanctions are given effect within the Bailiwick under the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020.

Firms must check whether they provide any trust services to or for the benefit of, maintain any accounts for, or otherwise have any kind of relationship with, any designated persons. Thereafter firms must report any findings in accordance with their obligations and cease the provision of such services.

The Policy & Resources Committee has issued a general licence ([here](#)) which provides a 120 day winding down period in which to take the action necessary to exit exiting relationships. The licence, like the prohibition, **does not** apply to any relationship where an asset freeze is in place.

Further details are available [here](#).

## 9. AML/CFT - updates

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Appendix C (list of equivalent jurisdictions) and Appendix I (list of jurisdictions under increased monitoring) of the Handbook ([here](#)) have been updated to reflect the Financial Action Task Force's updated list of jurisdictions under increased monitoring, which now includes South Africa.

The Commission has also issued an instruction to all specified businesses setting out the steps to be taken before the end of December 2023 in respect of business relationships they have which are connected to South Africa.

## 10. Regulatory enforcement

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The Commission made two prohibition orders in February 2023, prohibiting the individuals concerned from holding certain functions for a period and imposing on them discretionary financial penalties of £133,000 and £35,000 respectively.

The sanctions were imposed following each individual's failure to meet the minimum criteria for licensing in Schedule 1 of the Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

## 11. Data Protection - news

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The window for businesses to renew or register with the Office of the Data Protection Authority (the **ODPA**) in accordance with their legal obligations has expired. Any business that has failed to register ahead of the deadline may incur a penalty.

The ODPA has issued an enforcement order against, and made a public statement regarding, a States committee in respect of data protection failings relating to training and governance. Following complaints, the ODPA initiated two independent investigations which found that:

- training provided to staff members was not robust in either its quality, or the process by which it was rolled out to staff and processes to monitor and enforce the completion of mandatory data protection training were ineffective, as a consequence of which personal data was accessed by staff members without apparent justification; and
- leaver processes were not correctly followed, meaning that leavers had not been required to return employer issued equipment and as a result new staff members had not been issued with workplace devices and had used personal devices for work purposes.

Further details are available [here](#).

In other news, latest breach statistics reveal that 28 personal data breaches were reported to the ODPA during November and December 2022 bringing the total for 2022 to 151, a reduction of 26 compared to 2021. Further details are available [here](#).

## 12. CIFO - news

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The Channel Islands Financial Ombudsman (the **CIFO**) has reported that the number of complaints it received across the Channel Islands during the fourth quarter of 2022 (Q4) was 127, of which 74 were within its remit. Insurance (home emergency insurance), current accounts and health insurance were the products most complained about, and in the main, complaints related to delay, non-payment of claim and refusal of service.

Of the 45 complaints which were mediated or determined by CIFO in Q4, 38 per cent were found in favour of the complainant and 29 per cent were upheld in part, with the remaining complaints found in favour of the financial services provider.

The full report is available [here](#).

## 13. MO FinReg Forum

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If you would like to participate in our quarterly FinReg Forum, which provides updates on similar matters for each of Guernsey, Jersey (where the forum is hosted) and from time to time the Isle of Man (provided by Cains), please do get in touch.

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