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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 flying from a pole in the center of the frame, positioned between two of the buildings. The bottom portion of the image is overlaid with a semi-transparent red gradient.

# FinReg Update

Guernsey

1 January to 30 April 2024

Published on 8 May 2024

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# Quick Fire Updates

## 1. Prescribed businesses – revisions to supervisory framework

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Proposals have been approved to amend both the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **POC Law**) and the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the **PB Law**) to enhance the effectiveness of the Bailiwick of Guernsey's (the **Bailiwick**) supervisory framework for prescribed businesses ([here](#)).

A 'prescribed business' includes individuals acting as a director of not more than six companies (which are not otherwise exempt from registration with the Guernsey Financial Services Commission (the **Commission**)) as well as businesses providing legal, accountancy and estate agency services (a **PB**).

The amendments include:

- a requirement that applicants for registration as a PB provide the Commission with details of the name, date of birth and place of residence of its directors, partners and beneficial owners, with an ongoing duty to notify the Commission of any changes, and
- an increase in the level of discretionary financial penalties the Commission may impose on a (former) PB, including its directors, controllers, partners, senior officers and beneficial owners, from the current level of £200,000 to £4,000,000. This change will bring PBs in line with the equivalent discretionary penalties that may currently be imposed on financial services businesses (**FSBs**).

These amendments, which formed part of the Bailiwick's preparations for its MONEYVAL evaluation, expand the scope of the Commission's supervisory powers and ensure that the sanctions available to it are sufficiently dissuasive.

## 2. Rules for Retail General Insurers - update

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Following its consultation on the rules for retail general insurers, the Commission has published revisions to the Insurance Managers Rules and Guidance, 2021 (the **Insurance Managers Rules**) ([here](#)).

The Commission noted that the responses from Guernsey's insurance industry demonstrated a sound understanding of the importance of providing appropriate safeguards for customers while continuing to attract new business.

The amendments to the Insurance Managers Rules, which came into force on **15 February 2024**, ensure they remain appropriate for the Bailiwick to meet international standards. The amendments include:

- increasing the minimum capital requirements of licensed insurance managers managing general retail insurers, to £100,000 or 125% of the licensee's professional indemnity insurance deductible or excess, if higher and
- introducing new client assessment requirements for licensed insurance managers to assess, among other things, whether the client services retail customers.

## 3. Disclosure rules for insurance intermediaries – feedback on consultation

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In our Updater for October to December 2023 ([here](#)), we reported on the Commission's consultation on proposed changes to the Insurance Intermediaries Rules and Guidance (the **Insurance Intermediaries Rules**) to require insurance intermediaries to disclose the nature of their relationship with the insurers with whom they deal as well as a requirement to disclose the basis on which they are remunerated.

The Commission has now published its feedback report on this consultation ([here](#)). Respondents were largely supportive of the proposed changes to the Insurance Intermediaries Rules as they reflect well-established good practice.

The amendments to the Insurance Intermediaries (Amendment) Rules, 2024 ([here](#)) will come into effect on **1 January 2025**.

## 4. Thematic review of governance, risk and compliance controls to counter financial crime – estate agency, legal and accountancy services

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In late 2023, the Commission undertook a thematic review of the financial crime controls implemented within businesses registered with the Commission as PBs. The Commission has now published the Thematic Review of Governance, Risk and Compliance Controls to Counter Financial Crime – Estate Agency, Legal and Accountancy Services ([here](#)) (the **Thematic**).

The Thematic identified five areas for improvement, namely:

- multi-jurisdictional policies, procedures and controls; some businesses that applied a global approach had not thereby complied with the Bailiwick's Handbook on Countering Financial Crime (AML/CTF/CPF) (the **Handbook**)
- determination of the customer and application of enhanced customer due diligence where services are requested by a FSB or PB acting on behalf of its own customers; highlighting the need to correctly identify which entity within the transaction is the customer and then consider all relevant risk factors to a relationship
- risk-based corroboration of the source of funds and source of wealth; PBs must go into sufficient depth to establish and understand the customer's source of funds and source of wealth with appropriate corroborating evidence obtained
- outsourcing to a third party; PBs must maintain effective oversight of any outsourced compliance functions, and
- determination of business relations or occasional transactions; PBs must ensure that the process for determining whether the engagement with the customer is a business relationship or occasional transaction is correctly informed and monitored and that regulatory reporting is consistent with guidance in the Financial Crime Risk Return guidance document ([here](#)).

For each of the areas identified as requiring improvement, the Commission has provided a case study for the three PB sectors focusing on the issues pertinent to that sector.

## 5. National Risk Assessment for Legal Persons and Legal Arrangements

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The States of Guernsey Policy and Resources Committee (the **Committee**) has published its National Risk Assessment for Legal Persons and Legal Arrangements ([here](#)) (the **NRA LP/LA**). It is complementary to the Bailiwick's National Risk Assessment 2023 ([here](#)) (the **NRA2**), published in December 2023, and the two reports should be read in conjunction with each other.

Each of the different types of legal person (**LP**) and legal arrangement (**LA**) listed in the NRA LA/LP has been assigned a risk rating, following the approach adopted in the NRA2, and the following points should be noted, when interpreting the ratings:

- as with those in NRA2, the ratings are relative as between different LPs and LAs
- the ratings are applied at category level which means they do not necessarily apply to every LP or LA in the relevant category as the risk rating attributed to a particular business will also encompass other factors which may raise or reduce the overall risk of a particular LP or LA, and
- the residual risks, ie the risks that remain when the mitigating factors applicable to a particular LP or LA have been considered, eg the majority of LPs and LAs with a cross-border links are administered by a licensee who is supervised by the Commission for its compliance with the Bailiwick's AML/CFT/CPF framework.

## 6. Sanctions Notice – amendments to legislation

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The asset freeze measures applicable to persons designated under the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 ([here](#)) have been amended with effect from **6 March 2024**, including the scope of the reporting obligations of relevant institutions and of the prohibition on dealing with frozen funds.

## 7. AML/CFT/CPF Handbook - update

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Following consultation, the Commission has updated the Handbook ([here](#)) in a number of ways:

- to support the extension of the existing obligations upon specified businesses to countering proliferation financing (**CPF**)
- specified businesses must have undertaken a CPF business risk assessment before **31 December 2024**
- to reflect the changes to the Bailiwick's sanctions framework post-Brexit
- to reflect the December 2023 publication of the Bailiwick's NRA2 and first CPF NRA, and
- to amend rules and guidance on pooled bank accounts, including in relation to the provision of banking services to local, non-FSBs.

The Handbook has also been updated to take account of a number of recent legislative changes, including:

- to provide guidance on preventative measures in relation to the new offences of failure to prevent money laundering or to prevent terrorist financing (see Item 11 below)
- amending thresholds for wire transfers to align with FATF recommendations and the requirement for money service providers to report suspicious activity in any country affected by the suspicion as well as Guernsey, as reflected in recent amendments to the Transfer of Funds (Guernsey) Ordinance, 2017 ([here](#)), and
- amending Chapter 7 to:
  - include a requirement to take reasonable measures to identify and verify the powers that regulate an LP or LA and reporting suspicious activity identified when carrying out enhanced customer due diligence where higher risks are identified at time of payout, and
  - reflect changes made to the Beneficial Ownership (Definitions) Regulations, 2017 (which amended the list of recognised stock exchanges) ([here](#)).

## 8. Regulatory enforcement

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The Commission made several public statements between January and March 2024 in respect of certain licensees and associated individuals, including for:

- deliberately or recklessly making several false and/or misleading statements when completing their personal questionnaire in connection with an application for licensing of an investment manager and authorisation of a CIS ([here](#))
- failing to ensure compliance with the Minimum Criteria for Licensing pursuant to Schedule 1 of the Regulation of Fiduciaries, Administrative Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 ([here](#)), and
- carrying out, by way of business, without a licence, the management and administration of trusts and companies, including acting as protector for trusts and as company secretary and director where the clients were politically exposed persons from high-risk jurisdictions ([here](#)).


In January 2024, Guernsey's Court of Appeal allowed an appeal by the Commission overturning a Royal Court judgment against a decision to impose discretionary financial penalties and prohibition orders on three persons. This judgment has confirmed the legal framework against which the provisions of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 should be determined. Further details can be found in our legal update [here](#).

## 9. Guernsey's contribution to the UK economy

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At its industry update in January 2024, Guernsey Finance reported the finding of a recent research report, *The Value of Guernsey's Financial Services Industry to the UK Economy* (the **Report**) ([here](#)). The Report, prepared by Frontier Economics, highlights





Guernsey's strong reputation as a major international finance centre, the evolution of Guernsey's financial services offering, particularly in sustainability and demonstrates that the sector generates significant income for the UK economy. The Report's key findings include that:

- Guernsey offers a wide range of on-island banking and fiduciary services which enhance its attractiveness for doing business and provide diversity and economic resilience
- Guernsey's fiduciary providers have well-established relationships with UK-based professional services firms and this increases the competitiveness of UK firms, generating additional exports and revenues for the UK
- Guernsey's trust structure facilitates UK-based philanthropic activity and so creates additional social value for the UK, and
- Guernsey-based pension providers generate significant revenue for UK-based professional services firms and investment managers estimated at £30 million per year.

### 10. S&P Global affirms Guernsey's credit rating

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In January 2024, S&P Global affirmed Guernsey's credit rating at A+/A-1 with a stable outlook ([here](#)).

S&P Global's credit rating assessments are typically used by prospective lenders and businesses seeking to invest in Guernsey to help assess the level of risk associated with the jurisdiction.

### 11. New corporate offences - update

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In our Updater for July to 2 October 2023 ([here](#)), we reported on new corporate offences of failing to prevent the facilitation of tax evasion by employees and other persons acting on behalf of the relevant organisation and failing to prevent money laundering, terrorist financing or bribery.

These offences came into force on **26 April 2024**.

As these offences can only be committed by licensees within the meaning of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, statutory guidance has been issued in the form of amendments to the Handbook (see Item 7 above)

In addition, the States of Guernsey's Committee for Home Affairs has published two guidance documents in respect of the prevention procedures necessary for a relevant commercial body to prove it had adequate procedures in place in relation to preventing persons associated with it from committing bribery ([here](#)), and preventing criminal facilitation of tax evasion ([here](#)).

Read our legal update on failing to prevent bribery ([here](#)).

### 12. Financial Ombudsman - news

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The Channel Islands Financial Ombudsman received 134 complaints in the fourth quarter of 2023, of which 87 were within its remit. Home insurance, current accounts, home emergency insurance and health insurance were the product areas most complained about, and in the main, complaints related to poor

administration or delay, non-payment of claim and fees and charges. Further details can be found [here](#).

### 13. Data Protection - news

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In January 2024, the European Union (the **EU**) confirmed that the Bailiwick's privacy laws satisfy EU data adequacy status, meaning that the previous adequacy decisions adopted for Guernsey remains in place and data can continue to flow freely between Guernsey and the EU. Further details can be found [here](#).

Statistics for the fourth quarter of 2023 reveal that 39 personal data breaches were reported to the Office of the Data Protection Authority (the **ODPA**) affecting some 1,115 individuals. The total number of breaches reported in 2023 were 145 (compared with 151 in 2022 and 177 in 2021). Further details are available [here](#).

In April, the ODPA published a public statement reporting its findings that the Committee had breached the Data Protection (Bailiwick of Guernsey) Law, 2017 (the **DP Law**) by failing to provide information a jobseeker was entitled to receive under the right of access ([here](#)). The ODPA issued an Enforcement Order requiring the Committee to disclose the information with appropriate redactions applied.

Whilst the Committee accepted the ODPA decision in the specific case, it intends to discuss with the Committee for Home Affairs what changes should be made to Guernsey's data protection legislation ([here](#)).

### 14. Commission - newsletter

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In January 2024, the Commission launched a newsletter, The Leopard, to provide industry and other interested parties with a digest of recent news and updates, as well as looking ahead at what's coming up and the Commission's priorities.

The January and April 2024 editions can be accessed [here](#) (where you can also sign up to receive the newsletter).

### 15. 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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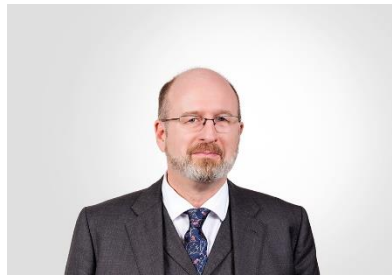
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