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# New businesses regulations in Guernsey for financial firms

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The Guernsey Financial Services Commission published its final draft of the **Lending, Credit and Finance Rules and Guidance, 2023** (the "**New Rules**") on Thursday 19 January 2023. These support the **Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022** (the "**Law**").

We explained at the time that there are now four license categories and that more Guernsey firms may be covered by the New Rules than might have been expected – but what does this all mean?

This post concerns Financial Firm Businesses ("**FFB**s"), many of which may have been registered under the now legacy The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 as amended ("the **NRFSB Law**") and regime.

If your business is in any way involved, this is important information that you will need to be aware of prior to 1 July 2023.

## What counts as an FFB?

FFBs are defined by the activities they conduct, rather than the types of business they are or how they label themselves.

These activities are listed in Part A of Schedule 1 of the Law. At the time of writing, these are:

- Lending money – except where a firm already holds a Part II licence
- Financial leasing
- Money services, such as cheque cashing and similar businesses
- Dealing in bullion or stamps, where sales or connected sales have over £10,000 in value
- Transmitting money or value across an informal payment network
- Controlling means of payment (including e-money)
- Providing financial guarantees
- Trading in currencies ("forex"), commodities or money market instruments
- Participating in securities issues, such as underwriting or book building for share issues
- Providing settlement or clearing services for financial assets

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- Advising on capital structure, industrial strategy, mergers or acquisitions when not in business as a lawyer or accountant
- Money broking
- Money changing
- Managing or advising on asset portfolios of others
- Providing safe custody services
- Safekeeping or administering cash for customers
- Operating a credit union
- Accepting repayable funds other than deposits
- Investing, administering or managing money for others

This list is quite long and there are situations where FFBs are already licenced under a different category.

## What do I need to do?

Firms providing the above service will likely need to apply for a **Part III FFB licence** before 1 July 2023.

If your business is already a Part II or banking licenced business, then the activities of your firm will be covered by that licence. However, you will still need to comply with the requirements of Part III FFB licensees as if you also held that licence, too.

## How is the Law different from the old NRFSB regime?

### Business criteria

There are key criteria that need to be met by any business under the New Rules, which can be found in Parts 2 through to 6 (inclusive). These relate to:

- Corporate governance and effective management
- Conduct of business
- Prudential and insurance requirements
- Cooperation with the GFSC
- Consumer protection and unfair agreement terms

Most of these criteria will relate to things that most firms will be doing already as good business practice, but we have highlighted the more specific items of conduct and consumer protection below.

### Personnel requirements

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Under the NRFSB Law, there was a requirement for directors of firms to be fit and proper persons. This has not gone away, but now there are additional rules for personnel that apply to all licenced businesses, including FFBs.

Rule 2.13 of the New Rules imposes a similar set of rules to Schedule 2 of the NRFSB Law, defining how directors should act and be described as "fit and proper persons", but it extends this to all employees and partners of FFBs. Training plans are a must for all personnel and anyone who will be providing advice to customers must be "suitably trained", according to Rule 2.14.

## Supervised role

Going another step further is the requirement that personnel in "supervised roles" are notified to the GFSC, who have the statutory power to object to their appointment. These roles are:

- Controllers (such as majority or significant shareholders, or where lots of shareholders are the same ultimate beneficial owner, that person).
- directors
- Partners in the case of partnerships
- Money laundering reporting officers
- Compliance officers

If you are selling a licensed credit or home finance business, broker or other intermediary, you need to inform the GFSC with at least 14 days' notice. The GFSC will want to know who the proposed replacements will be, and they have the power to object to the proposed replacements, just as they do with the initial appointment.

## Conflicts of interest

Rule 2.5 demands that FFBs act impartially, do not place their interests above those of their customers and ensure fair treatment between customers. We imagine that many FFBs are already doing this as a matter of good business conduct, but now there is a formal requirement to have a conflict of interests policy and a written record of how any conflicts which do arise are managed.

## Accounting rules

All accounts must be prepared under US, UK or IFRS reporting standards, and must be audited. The GFSC must be notified about the appointment, removal or resignation of any auditor and upon the signing-off of a qualified audit report.

## Annual return

The audited accounts must be submitted along with an "*up-to-date, narrative, business plan*", data on customer complaints in a format that the GFSC shall determine and any other information that the GFSC might

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specify at any time. This should be submitted electronically.

### Outsourcing

Firms must conduct a risk assessment on any functions that they outsource, which the GFSC shall hold the boards of firms accountable for and not the outsourced provider. There must be a contingency – often called 'business continuity' – plan in the event of disruption caused by an outsourced service failing.

The New Rules don't specify what this outsourcing might be, but the requirement is similar to that proposed by the European Banking Authority in its *Guidelines on outsourcing arrangements* that targeted the provision of IT and other digital outsourcing services. Firms whose software relies on a cloud computing provider should have contingency plans in place in case such provider is unable to service the business.

### Financial resources

Firms must ensure that they hold enough liquid assets in reserve to allow a three-month orderly winding down of the business. These assets must be checked quarterly and the GFSC notified if the firm can no longer meet this requirement.

## What happens if we ignore the New Rules?

Fines may be issued, and in some cases a fine and up to two years imprisonment, for persons who contravene the Law and by extension the New Rules. These punishments may be handed down to directors and officers of organisations as well as to companies and partnerships themselves.

*If you think that your firm might be impacted by the New Rules, we are happy to help. Please get in touch with our Guernsey Corporate Advisory team to discuss potential impacts to your business.*

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