

Snapshot: how does the GFSC gather information - and is it protected?

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In order to discharge its functions effectively the Guernsey Financial Services Commission (GFSC) requires a broad range of information, which often comes from the very licensees it regulates. Much of that information will be confidential (if not commercially sensitive), meaning the licensees will want to understand whether it is protected in the GFSC's hands.

This briefing summarises various ways in which the GFSC gathers the information it needs and outlines the extent of the protections afforded to that information.

How does the GFSC gather information from licensees?

It is important that licensees or registered entities provide the GFSC with the information that it reasonably requires: a failure to comply with the GFSC's information requirements (or the provision of false or misleading information) can potentially give rise to regulatory sanction and/or constitute a criminal offence. The following is an overview of ways in which the GFSC gathers information.

Regulatory returns

Regulated firms will be familiar with one of the more 'routine' ways in which the GFSC gathers information, namely the obligation to submit regular regulatory returns.

Compulsory information requests

The Regulatory and AML Laws^[1] provide the GFSC with the power to serve a 'notice' requiring (broadly speaking) that a person/entity provide such information or documents, with an explanation of them, and/or attend an interview to answer such questions, as the GFSC reasonably requires for the purposes of the performance of its functions.

This is clearly a broad power, which is available to the GFSC in the performance of its supervisory functions generally. The recipient of a notice must respond promptly and comprehensively to it, and if they are invited to an interview they should prepare fully.

Broadly comparable powers are available if the GFSC has reasonable grounds to suspect that a person has contravened a relevant regulatory requirement.

The Regulatory and AML Laws also empower an officer or an agent to enter, at a reasonable time, any premises occupied by a person on whom a notice has been given (or any other premises where information or documents are kept by such person) for the purpose of obtaining the information set out in the notice.

The GFSC is permitted to copy and/or retain documents it obtains as a result of such a notice.

Reports by skilled persons

The GFSC can require a person it supervises to provide a report by an accountant or other person with relevant professional skill on any information, documents or questions that could be the subject of a notice.

Appointment of investigators

In appropriate cases the GFSC is empowered to appoint 'competent persons' to investigate and report on a wide range of matters relating to its supervisory functions, including (for example): the nature, conduct or state of a registered person's financial service business; compliance with codes of practice; and compliance with specified obligations under Guernsey's AML/CFT regime.

Appointed investigators have (very) broad powers to compel information. Every person who is or was at any material time a registered person under investigation, a principal person of such a person, or officer, employee, banker, auditor (noting the specific protections afforded by legal professional privilege) of such a registered person and is required to:

- provide all documents relating to the registered person or formerly registered person which are in their custody or power
- attend at an appointed time and place to answer questions which they reasonably require the person to answer for the purposes of the investigation
- otherwise give all assistance in connection with the investigation which the person is reasonably able to give

Self-reporting obligation on registered persons

That the GFSC is reliant on firms is implicit in the Codes of Practice with which registered persons must comply: one of the overarching Principles is that a registered person "*should deal with the [GFSC] in an open and co-operative manner*". This Principle is underpinned by a requirement to notify the GFSC in writing as soon as the licensee becomes aware of any matter that might reasonably be expected to affect its registration or be in the interests of its customers to disclose, as well as more specific notification obligations.

In effect, this Principle requires firms to self-report matters of interest to the GFSC.

It is important that licensees comply (and can demonstrate that they have complied) on an ongoing basis with this self-reporting obligation: the GFSC has imposed financial penalties on firms that it concluded had failed to discharge these obligations^[2]. Importantly, registered persons should remember that, even if they are under investigation, they remain subject to this self-reporting obligation.

| How is my confidential information protected?

Understandably, firms will be concerned to ensure that the information they provide to the GFSC remains confidential.

'Commercial sensitivity' is not a ground on which a firm can refuse to provide information to which the GFSC or its appointed investigators are entitled. However, the Regulatory and AML Laws do confer certain protections on information provided to the GFSC.

Each of the Regulatory and AML Laws contains a provision to the effect that a person who receives information relating to the business or other affairs of any person:

- under or for the purposes of one of those laws; or
- directly or indirectly from a person who has so received it

shall be guilty of an offence and liable to imprisonment for a term of two years and a fine if they disclose the information unless:

- they have the consent of the person to whom it relates and (if different) the person from whom it was received; or
- the disclosure falls within one of a limited number of 'gateways' set out in the law in question (eg for the purpose of enabling or assisting the GFSC to discharge its functions; with a view to the investigation of a suspected offence)

In broad terms, this means the GFSC is only permitted to use confidential information that it receives in the discharge of its public functions or for certain other purposes that are in the

public interest, on pain of potentially severe consequences if it does otherwise. This careful balance should provide firms with reassurance that their sensitive information will be protected.

Further, and importantly, the Regulatory and AML Laws contains exclusions from disclosure in respect of material that is protected by legal professional privilege. This enables firms to be frank with their legal advisers when seeking legal advice, without fear that they will later be compelled to disclose that correspondence to the regulator.

[1] See in particular the Regulatory Laws (which include *the Banking Supervision (Bailiwick of Guernsey) Law, 2020*, *the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020*, *Insurance Business (Bailiwick of Guernsey) Law, 2002*, *the Protection of Investors (Bailiwick of Guernsey) Law, 2020* and *the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999*).

[2] <https://www.gfsc.gg/commission/enforcement/public-statements>

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