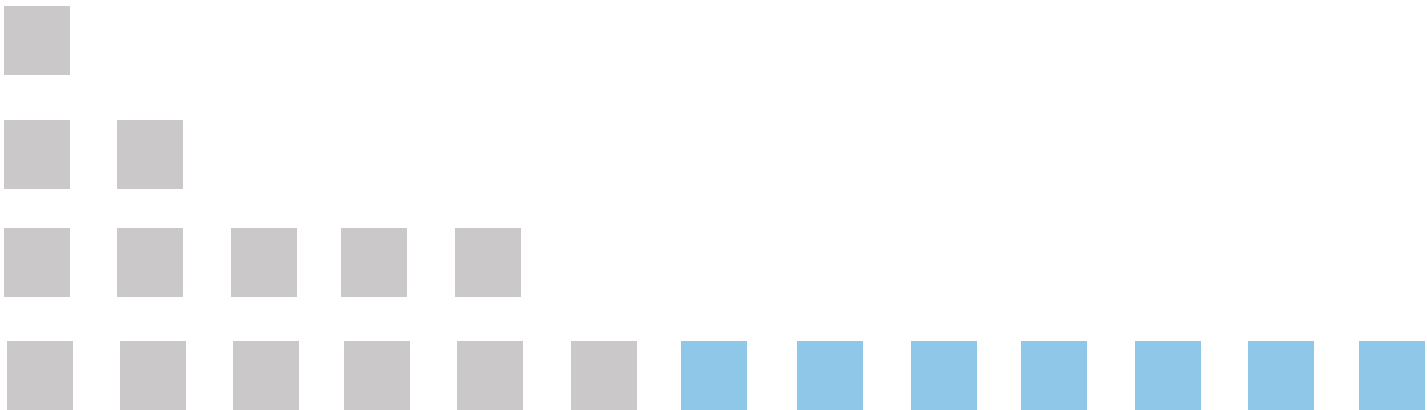


GFSC Guidance Note

GFSC Consent to Material Changes to a Regulated Firm or its Business



1. Introduction

1.1 The purpose of this document is to provide guidance around the obligation, under Section 83A of the Financial Services Act 2019 (the “FSA 2019”), for firms to obtain the GFSC’s consent to any material change that they propose to make to their business plan, financial resources or corporate governance arrangements, which may affect their continuing satisfaction of the threshold conditions. Mainly, this guidance will cover the types of changes to which this obligation applies.

1.2 Section 83A complements the more general requirement, under Principle 12 of the Financial Services (Core Principles) Regulations 2022 (the 12th Core Principle), for firms to deal with the GFSC in an open, co-operative and timely way, and to disclose to the GFSC any matter of which it would reasonably expect notice.

1.3 It is also key to allowing the GFSC to fulfil its duty under Section 65(1) of the FSA 2019 of ensuring that firms satisfy, and continue to satisfy, the threshold conditions in relation to all of the regulated activities for which they have, or will have, permission.

1.4 The GFSC expects firms to consider properly all potential consequences of proposed changes in this context. Changes to business plans, financial resources or corporate governance arrangements that can potentially affect a firm’s ability to satisfy the threshold conditions are wide-ranging and it may be difficult to be certain whether a proposed change will in fact have this impact. To be clear, firms are required to submit a consent application under Section 83A to the GFSC if a proposed change may affect their satisfaction of the threshold conditions, even where they do not know conclusively that it will do so. The key question in this context is whether a firm, on evaluation and acting reasonably, considers that a proposed change to its business plan, financial resources or corporate governance arrangements, creates a genuine and realistic prospect of impacting its continuing compliance with the threshold conditions.

1.5 The GFSC will assess each consent application on a case-by-case basis, and will have regard in its assessment to all matters that it considers relevant, whether they arise in Gibraltar or elsewhere. The significance of the relevant facts and circumstances will be considered in relation to the regulated activities for which the firm has, or will have, permission, and in relation to the GFSC’s ability to supervise the firm adequately, in the context of its statutory objectives. It should be noted that a series of changes may trigger Section 83A when taken together, even though any one of them in isolation might not.

1.6 It is for firms to assess and determine whether a proposed change meets the criteria in Section 83A. If firms are in doubt as to whether a consent application under Section 83A is required following their assessment, they should take such professional advice as they deem necessary. They can also discuss the matter with their usual supervisory contact at the GFSC. In the majority of cases, our expectation is that firms will be able to assess the matter, discuss it and come to a view. If a firm forms the view that the criteria is not met, we do not expect them to submit a consent application under Section 83A. However, where this is the case, we expect the firm to let us know that they have considered a particular matter and have come to this view, as part of their general obligations under the 12th Core Principle.

1.7 Where, in the course of supervising a firm, we become aware of its failure to submit a consent application in respect of a change that we consider to fall within scope of Section 83A, we will be fair and proportionate

in our response. We will take factors such as those listed below into account when considering appropriate next steps:

- Whether the firm can demonstrate due process, appropriate consideration/challenge and reasoned decision-making in its decision not to submit a consent application under Section 83A to the GFSC (e.g. via Board minutes);
- Whether there have been repeated failures to submit a consent application under Section 83A that the GFSC considers to have been necessary;
- What the consequences of the failure to submit a consent application are (e.g. was the firm's ability to satisfy the threshold conditions affected in practice?); and
- Whether the failure to submit a consent application brings into question the fitness and propriety of the relevant decision-makers.

1.8 Where a firm has made a well-thought-out decision that a proposed change does not trigger the requirements under Section 83A, can evidence this, and has notified the GFSC of the matter under the 12th Core Principle, we will be unlikely to take regulatory action (in respect of the decision not to submit a consent application) even where we ultimately disagree with the firm's decision to go ahead without doing so. Where we are of the view that it should have been clear to a firm that the submission of a consent application under Section 83A was required, and the firm cannot satisfactorily explain its decision not to submit one, it is likely that we will take regulatory action.

2. Changes Requiring Submission of a Consent Application under Section 83A FSA 2019

2.1 Section 83A(1) of the FSA 2019 states that:

"A regulated firm must obtain the GFSC's consent to any material change that the firm proposes to make to its–

- (a) business plan;*
- (b) financial resources; or*
- (c) corporate governance arrangements,*

which may affect the firm's continuing satisfaction of the threshold conditions in relation to any of the regulated activities for which the firm has permission."

2.2 The following is a non-exhaustive list of changes in respect of which firms should consider submitting a consent application to the GFSC under Section 83A of the FSA 2019:

- Any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm's activities, risk profile or resources, including, but not limited to:
 - setting up a new undertaking within a firm's group, or a new branch, or establishing a new subsidiary (whether in Gibraltar or another jurisdiction);
 - commencing the provision of cross-border services into a new jurisdiction;
 - commencing the provision of a new type of product or service (whether in Gibraltar or another jurisdiction);

- materially changing an existing business mix;
- materially changing the firm's operating model;
- significantly reducing the scope of regulated activities;
- entering into, or significantly changing, a material outsourcing arrangement;
- changing the firm's legal structure (for example converting to or from a Protected Cell Company);
- making a substantial change or a series of changes in the governing body of an overseas firm;
- making a change which limits the liability of any of the members or partners of a firm such as a general partner becoming a limited partner, or the re-registration as a limited liability company of a company incorporated with unlimited liability;
- significantly changing the firm's client profile type (for example, in respect of financial services business, from professional clients to retail clients);
- entering into, or significantly changing, any arrangement with a connected party;
- Any significant growth in volume in one or more existing lines of business;
- Any action which a firm proposes to take which would result in a material deterioration in its capital adequacy or solvency, including, but not limited to:
 - any action which would result in a material change in the firm's financial resources or financial resources requirement;
 - the payment of dividends or the repayment of share capital or a subordinated loan;
 - for firms which are subject to the rules on consolidated financial supervision, any proposal which it has been notified of, under which another group company may be considering such an action;
 - significant trading or non-trading losses (whether recognised or unrecognised);
- In the case of insurers:
 - entering into, or significantly changing, any arrangement concerning portfolio transfers, loss portfolio transfers or adverse development cover;
 - changing the firm's reinsurance programme, where this results in a significant change in the amount of risk retained by the firm;
 - where the firm is structured as a Protected Cell Company, opening or closing a cell.

2.3 Firms are also reminded that the sector-specific regulations that apply to them may also specify further matters that they must notify the GFSC of (e.g. the Financial Services (Fiduciary Services) Regulations 2020).

2.4 It is intended for Section 83A to operate in a way that complements the more general requirement under the 12th Core Principle for firms to deal openly, co-operatively and in a timely manner with the GFSC, and to disclose any matter of which we would reasonably expect notice. Section 83A is intended to allow the GFSC a reasonable opportunity to monitor material changes to firms' businesses, not to impose unworkable obligations on regulated firms. It is therefore recognised that not all proposed changes would be 'material' for the purposes of Section 83A.

2.5 By way of example, where an insurer decides to increase premium rates to mitigate the effects of inflation, and does not expect this rating action to materially alter the firm's solvency coverage, resourcing requirements or client profile, it will not be required to submit a consent application to the GFSC under Section 83A (but should still let the GFSC know under the 12th Core Principle). Similarly, where there is only a small proposed change in the volumes written by an insurer, there is no requirement to submit a consent

application to the GFSC if the firm, on evaluation and acting reasonably, considers it will not create a genuine and realistic prospect of impacting continuing compliance with the threshold conditions. If the change in volumes, despite not being large, alters the risk profile of the firm in a material way, this would create such a prospect, and the firm should submit a consent application to the GFSC under Section 83A.

3. Obligation to Obtain the GFSC's Consent

3.1 Section 83A(2) and (3) of the FSA 2019 further state that:

“(2) A regulated firm must obtain the GFSC’s consent before implementing a change to which subsection (1) applies.

(3) A consent application under subsection (1) must–

(a) be made in the form and manner the GFSC directs;

(b) contain such information as the GFSC reasonably requires; and

(c) be accompanied by any prescribed fee.”

3.2 Firms are obliged to obtain the GFSC's consent before making any changes that fall within scope of Section 83A. If a firm proposes to make any of the types of changes listed in paragraph 2.2 of this Guidance Note, it should submit a consent application to the GFSC unless it is confident that the change falls outside scope of Section 83A. In such cases, the firm should still inform the GFSC of the proposed change in accordance with the 12th Core Principle.

3.3 Consent applications will be dealt with in one of three ways. Following its initial assessment, the GFSC will consider that:

- The proposed change falls within scope of Section 83A. In these cases, the GFSC will need to make a further assessment in order to decide whether to grant its consent for the firm to proceed. Further information may be required from the firm for the purposes of this assessment; or
- In order to be able to implement the proposed change, the firm must successfully apply for a variation of its permission under Section 68 of the FSA 2019. Where this is the case, the GFSC will need to make a further assessment and further information may be required from the firm; or
- The proposed change falls outside scope of Section 83A and Section 68 of the FSA 2019. Where this is the case, the firm will be notified by the GFSC accordingly.

3.4 Firms will be required to pay the 'non-complex application' fee for a 'Section 83A consent application' under the Financial Services (Fees) Regulations 2020 upon submission of each Section 83A consent application. Where the GFSC considers the application to be complex, or moderately complex, or that a variation of permission is required, firms will be required to pay the balance of the relevant fee. Where this is the case, the balance must be paid before the application is regarded as complete.

3.5 The GFSC will apply its best endeavours to processing Section 83A consent applications as quickly as possible, to the extent that its resources and priorities allow. Section 83A falls within Part 7 of the FSA 2019 and the GFSC is therefore subject to the time limits set out in this Part for processing consent applications made under this provision. We only expect to reach the upper limits of the statutory timescales for complex applications.

4. Form and Timing of Consent Application

4.1 Firms are expected to raise the types of proposed changes outlined above with the GFSC as soon as is reasonably practicable and before making any internal or external commitments.

4.2 Consent applications should be submitted using the Section 83A Consent Application Form, which can be found [here](#).