

GUERNSEY STATUTORY INSTRUMENT

2010 No.35

**The Banking Supervision (Bailiwick of Guernsey)
Regulations, 2010**

<i>Made</i>	<i>26 April, 2010</i>
<i>Coming into operation</i>	<i>30 April, 2010</i>
<i>Laid before the States</i>	<i>26 May, 2010</i>

THE POLICY COUNCIL, in exercise of the powers conferred on it by sections 4 and 60 of and paragraph 7 of Schedule 3 to the Banking Supervision (Bailiwick of Guernsey) Law, 1994^a and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission, hereby makes the following regulations:-

Provisions in respect of revocation of banking licences.

1. For the purposes of section 8 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 ("**the Law**"), and notwithstanding the provisions of subsection (2) of that section -

- (a) where the Commission is of the view that it is necessary or desirable to do so -

^a No. XIII of 1994; amended by No's. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; also amended by Ordinance No. XXXIII of 2003; and Statutory Instrument No. 1 of 2008.

- (i) in the interests of the public or of the depositors or potential depositors of a licensed institution, or
- (ii) for the protection or enhancement of the reputation of the Bailiwick as a finance centre,

the Commission may apply to the Court for an order under this regulation directing that its decision under section 8(1) of the Law to revoke a licence should, without prejudice to any appeal in respect of the decision under section 18 of the Law, have immediate effect; and the Court may make an order under this subparagraph on such terms as it thinks just, and

- (b) an application by the Commission for an order under subparagraph (a) may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte.

Investigations by inspectors.

2. (1) The Commission may, if it considers it desirable to do so in the interests of the reputation of the Bailiwick as a finance centre, appoint one or more competent persons (hereinafter called "inspectors") to investigate and report to the Commission on -

- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
- (b) the ownership or control of the institution;

and the Commission shall give notice in writing of the appointment to the institution concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, investigate the business of any other institution which is or has at any relevant time been -

- (a) a holding company, subsidiary or related company of the institution under investigation;
- (b) a subsidiary or related company of a holding company of the institution under investigation;
- (c) a holding company of a subsidiary of the institution under investigation; or
- (d) a body corporate in the case of which a shareholder controller of the institution under investigation, either alone or with associates, is entitled to exercise, or control the exercise of, more than 20 per cent of the voting power at a general meeting.

(3) Where an inspector decides to investigate the business of an institution under paragraph (2), he shall give notice in writing to the institution to that effect.

(4) Any person who is or has been a director, controller, manager, significant shareholder, employee, agent, banker, auditor, advocate or other legal adviser

of an institution being investigated under paragraph (1) or (2) -

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that institution; and the inspector may take copies of or extracts from any documents produced to him under this paragraph;
- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that institution; and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) The foregoing provisions of this regulation shall apply in relation to a former licensed institution as they apply in relation to a licensed institution.

(6) An inspector shall, if so required, produce evidence of his authority.

(7) A person who without reasonable excuse, proof whereof shall lie on him -

- (a) contravenes any provision of paragraph (4); or
- (b) obstructs or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right

conferred by this regulation;

is guilty of an offence.

(8) A statement made by a person in response to a requirement imposed by or under any provision of this regulation –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under paragraph (7) or section 47(1)(b) of the Law (but only in relation to a requirement imposed by or under this section),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(9) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

(10) This regulation is in addition to and not in derogation from section 27 of the Law; and the provisions of the Law shall (so far as they do not conflict with the preceding provisions of this regulation) apply in relation to this regulation and an investigation under it as they apply in relation to section 27 and an investigation under that section.

Provisions in respect of significant shareholders.

3. Sections 6(2), 8(1)(a) and (c), 14, 16 and 17 of the Law shall apply in relation to a significant shareholder as they apply in relation to a shareholder controller.

Amendment to Schedule 3.

4. In Schedule 3 to the Law in paragraphs 3(1) and 6A after "controller" insert ", significant shareholder".

5. In Schedule 3 to the Law, after paragraph 6A, insert the following paragraphs –

"System of notification to the Commission and related matters.

6B. The business of the institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on in such a way as to ensure that -

- (a) proprietary acquisitions (including subsidiaries, branches and the creation of joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) amounting to over 5 per cent of the institution's capital base are only entered into with the express approval of the Commission which approval should be sought by way of 30 days' prior notice of the proposed transaction and when considering whether to grant approval for the transaction the Commission must consider whether -
 - (i) the transaction will expose the institution to undue risk,
 - (ii) the institution has the necessary resources to undertake the transaction, and
 - (iii) any factors hinder effective supervision, in particular if the transaction is to occur in a country in which the legal system prohibits or hinders the sharing of information,
- (b) the intention to enter into proprietary acquisitions (including subsidiaries, branches and the creation of

joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) over £1,000,000, other than those referred to in subparagraph (a), is reported to the Commission 30 days prior to the proposed transaction,

- (c) the transfer of the interest of a significant shareholder or a shareholder controller of the institution is only effected with the express approval of the Commission which approval must be sought by way of 30 days' prior notice of the proposed transfer,
- (d) information on the condition of the bank's asset portfolios, including classification of credits, the level of provisioning and major problem assets together with information on other risk types such as material non-credit transactions and operational losses is sent to the Commission on a calendar year quarterly basis (no later than the end of the month following the end of the quarter), and where such information causes the Commission concern the institution shall increase its level of provisions and capital base and the frequency of reports to the Commission, as the Commission so directs,
- (e) the institution's board of directors are notified promptly if the institution receives information

which could have a material effect on assets and consequently on its levels of provisions, capital base and overall strength,

- (f) all returns and other documents required by or under this Law to be submitted to the Commission are signed both by the chief executive and chief financial officer of the institution, or their alternates, unless the Commission directs otherwise, and
- (g) all transactions with related companies or associates receive prior approval by the institution's board of directors and are not on more favourable terms than transactions with unrelated companies or persons who are not associates.

Risk management.

6C. The business of the institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on -

- (a) with a sufficient number of individuals employed in the Bailiwick to conduct all essential functions, which includes risk management functions,
- (b) in such a manner as to ensure that permanent compliance and risk management functions are conducted in the Bailiwick to assess the risks and legal compliance of all business conducted from or within the Bailiwick,

- (c) with an internal audit function, or an audit function that is compliant with the published guidance of the Commission."

Interpretation.

6. (1) In these Regulations, unless the context requires otherwise -

"**enactment**" means any Law or Ordinance or any subordinate legislation made thereunder,

"**Law**" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

and other expressions have the same meaning as in the Law.

- (2) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

- (3) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of these Regulations.

Citation.

7. These Regulations may be cited as the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010.

Commencement.

^b Ordres en Conseil Vol. XIII, p. 355.

8. These Regulations shall come into force on the 30 day of April, 2010.

Dated this 26 day of April, 2010

DEPUTY L. S. TROTT
Chief Minister
For and on behalf of the Policy Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision supplementary to that set out in the Banking Supervision (Bailiwick of Guernsey) Law, 1994 concerning the revocation of banking licences and in relation to the carrying on of deposit-taking business by licensed institutions and generally as to the manner in which licensed institutions conduct, or hold themselves out as conducting, their business.
