

PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) Law, 1994 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is

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No. XIII of 1994 (Ordres en Conseil Vol. XXXV, p. 271); as amended by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002 (No. XVII of 2002, Ordres en Conseil Vol. XLII(2), p. 644); the Insurance Business (Bailiwick of Guernsey) Law, 2002 (No. XXI of 2002, Ordres en Conseil Vol. XLII(2), p. 766); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003 (No. XVI of 2003); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (No. XVI of 2008); the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008 (No. IV of 2009); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010 (No. XXI of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. ** of 2015); the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 (No. ** of 2015); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2000 (G.S.I. No. 3 of 2000); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 1 of 2008); the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010 (G.S.I. No. 35 of 2010); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 83 of 2010). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance"; the Financial Services Commission (Fees) Regulations, 2014 (G.S.I. No. 94 of 2014).

given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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The Banking Supervision (Bailiwick of Guernsey) Law, 1994

THE STATES, in pursuance of their Resolution of the 31st day of March, 1993^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Restriction on acceptance of deposits

Prohibition of unlicensed deposit-taking business.

1. (1) Subject to the provisions of subsection (2), no person shall in the Bailiwick accept a deposit in the course of carrying on, whether in the Bailiwick or elsewhere, a deposit-taking business except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 6 (a "**banking licence**").

(2) This section does not apply in relation to –

(a) a person specified in Schedule 1 (provided that the

^a Article X of Billet d'État No. V of 1993.

exemption of a person so specified shall be subject to any restriction specified in Schedule 1 in relation to him), or

- (b) a transaction of a description specified by regulations of [the Policy Council] made for the purposes of this subsection after consultation with the Commission.

(3) [The Policy Council] may, after consultation with the Commission, by regulation amend Schedule 1 –

- (a) by adding any person to it or removing any person from it, or
- (b) by removing, relaxing or extending any restriction set out in it or by imposing any new restriction.

(4) Regulations under subsection (2) or (3) may prescribe transactions by reference to any factor appearing to [the Policy Council] to be appropriate and, in particular, by reference to all or any of the following –

- (a) the amount of the deposit in question,
- (b) the total liability of the person accepting the deposit to his depositors or other creditors,
- (c) the circumstances in which or the purpose for which the deposit is made,
- (d) the identity of the person by whom the deposit is made

or accepted, including his membership of a class whose membership is determined otherwise than by the Commission,

- (e) the number of, or the amount involved in, transactions of a particular description carried out by the person accepting the deposits or the frequency with which he carries out transactions of any particular description.

(5) Regulations under subsection (2) or (3) may provide that any exemption shall be subject to such conditions or requirements as may be specified in the regulations.

(6) A person who contravenes this section is guilty of an offence.

(7) The fact that a deposit is accepted in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

NOTES

In section 1, the words "T/the Council" in square brackets, wherever occurring, were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

The following Regulations have been made under section 1:

*Banking Supervision (Bailiwick of Guernsey) Regulations, 1994;
Banking Supervision (Bailiwick of Guernsey) (Amendment)
Regulations, 2000.*

The following case referred to the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971:

States of Guernsey v. Firth (1981) (Unreported, Court of Appeal, 5th March and 14th May) (Court of Appeal Judgments, 1964-89, p. 217).

Meaning of "deposit".

2. (1) Subject to the provisions of this section and of any regulations under section 4, in this Law "**deposit**" means, unless the context otherwise requires, a sum of money paid on terms –

- (a) under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, and
- (b) which are not referable to the provision of property or services or the giving of security,

and references in this Law to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of subsection (1)(b), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if –

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event of the property or services not in fact being sold, hired or otherwise provided,
- (b) it is paid by way of security for the performance of a

contract or by way of security in respect of loss which may result from the non-performance of a contract, or

- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) Except to the extent that any provision of this Law specifically provides otherwise, in this Law "**deposit**" does not include a sum paid –

- (a) by a licensed institution,
- (b) by a person specified in Schedule 1,
- (c) by any other person in the course of carrying on a business consisting wholly or mainly of lending money,
- (d) by one institution to another at a time when one is a subsidiary of the other, both are subsidiaries of another institution or the same individual is a shareholder controller of both,
- (e) by a person who, at the time of payment, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or manager of that person.

(4) Subsection (3)(e) shall have effect in its application to a sum paid by a partnership as if for the reference to the person paying the sum there were

substituted a reference to each of the partners.

- (5) In subsection (3)(e) **"close relative"** of a person means –
- (a) his spouse,
 - (b) his children, step-children, parents, step-parents, brothers, sisters, step-brothers and step-sisters, and
 - (c) the spouse of any person within paragraph (b).

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), the reference in this section to "parents" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, fathers or mothers who have parental responsibility in respect of the child.

Meaning of "deposit-taking business".

3. (1) Subject to the provisions of this section and of any regulations under section 4, a business is a deposit-taking business for the purposes of this Law if –

- (a) in the course of the business money received by way of deposit is lent to others, or
- (b) any other activity of the business is financed to any material extent out of the capital of or the interest on

money received by way of deposit.

(2) A business is not a deposit-taking business for the purposes of this Law if in the normal course of the business –

- (a) the person carrying on the business does not hold himself out as accepting deposits on a day to day basis, and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(3) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(4) In determining for the purposes of subsection (2)(b) whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(5) For the purposes of subsection (2) there shall be disregarded any deposit in respect of the acceptance of which the person in question is exempt from the prohibition in section 1(1) and any money received by way of deposit which is not used in the manner described in subsection (1).

Power to make regulations.

4. (1) [The Policy Council] may, after consultation with the Commission, make regulations –

- (a) concerning deposit-taking business,
- (b) amending the meaning of "deposit", "deposit-taking business", "holding company" and "subsidiary company" for the purposes of all or any of the provisions of this Law.

(2) Without prejudice to the generality of subsection (1)(b), regulations thereunder amending the meaning of "deposit-taking business" may provide for the taking into account, as the activities of an institution, of the activities of any person connected with it in such manner as may be specified in the regulations.

NOTES

In section 4, the words "The Policy Council" in square brackets in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

The following Regulations have been made under section 4:

Banking Supervision (Bailiwick of Guernsey) Regulations, 2010.

Licensing

Applications for banking licences.

5. (1) A person wishing to obtain a banking licence shall apply in that behalf to the Commission.

(2) If the applicant proposes to carry on deposit-taking business in or from within Alderney or Sark, the application shall contain a statement to that effect specifying the Island in question.

(3) An application for a banking licence shall be made in such form and manner as the Commission may require and shall be accompanied by –

- (a) a statement setting out the nature and scale of the proposed deposit-taking business, the applicant's plans for the future development of that business and particulars of the applicant's arrangements for the management of that business,
- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application, and
- (c) the appropriate fee prescribed by regulations under section 7,

provided that where the applicant is the holder of a banking licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any statement or information provided by him in connection with a previous application has changed.

(4) Upon receipt of an application for a banking licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be a director, controller or manager of the applicant to provide such additional information or documents as the Commission may

reasonably require for the purpose of determining the application.

(5) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case approved by the Commission, on such aspects of that information or statement as the Commission may specify.

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

(7) An application may be withdrawn by notice in writing to the Commission at any time before it is determined.

(8) Before deciding whether or not to grant a banking licence the Commission shall, if the application contains such a statement as is mentioned in subsection (2), consult the States of Alderney Finance Committee or, as the case may be, the Greffier of Sark.

(9) If at any time a licensed institution proposes to carry on a deposit-taking business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (8).

Grant or refusal of banking licences.

6. (1) The Commission may, upon receipt of an application for a banking licence, grant or refuse the application.

(2) The Commission shall not grant an application for a banking

licence unless satisfied that, in relation to the applicant [and in relation to any person who is or is to be a director, controller or manager of the applicant], the criteria specified in Schedule 3 are fulfilled.

(3) In considering whether or not to grant an application for a banking licence the Commission shall take into account such written guidance and shall act in accordance with such written directions as may be given by [the Policy Council] under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^b in relation to banking business; and, without prejudice to the generality of the foregoing provisions of this section, the Commission may also have regard to any matter to which it may lawfully have regard under section 8 when considering whether or not to revoke a banking licence.

(4) A banking licence may only be granted to an institution.

(5) The Commission may refuse an application for a banking licence which is not accompanied by the appropriate fee prescribed by regulations under section 7 or which is otherwise not made in accordance with the provisions of this Law.

NOTES

In section 6,

the words in square brackets in subsection (2) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(2), with effect from 11th August, 2003;

the words "the Policy Council" in square brackets in subsection (3) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

^b Ordres en Conseil Vol. XXX, p. 243.

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, with effect from 30th April, 2010, regulation 3, subsection (2) of this section shall apply in relation to a significant shareholder as it applies in relation to a shareholder controller.

Fees for banking licences.

7. [[The States of Guernsey Policy Council] may, after consultation with [the Policy Council], the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark,] by regulation prescribe fees to be payable to the Commission in respect of applications for and the grant of banking licences and, periodically, by licensed institutions in respect of banking licences; and such regulations may provide for the payment of interest or penalties in the event of default in the due payment of fees.

NOTES

In section 7,

the words in square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 2(1), with effect from 1st November, 2002;

the words "the States of Guernsey Policy Council" in the first pair of square brackets within the square brackets were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 2(a), with effect from 1st May, 2015;

the words "the Policy Council" in the second pair of square brackets within the square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words "Policy and Performance Committee" in the third pair of square brackets within the square brackets were substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

The following Regulations have been made under section 7:

Financial Services Commission (Fees) Regulations, 2014.

The functions of the Guernsey Financial Services Commission under this section relating to the enactment of regulations or orders which prescribe or specify fees or charges payable to the Guernsey Financial Services Commission and ancillary matters were transferred to and vested in the States of Guernsey Policy Council by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 1(a), with effect from 1st May, 2015, subject to, first, the savings and transitional provisions in section 3 and, second, the provisions of section 6 of the 2015 Ordinance.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.¹

Revocation of banking licences.

8. (1) The Commission may revoke the banking licence of an institution if it appears to the Commission that –

- (a) any of the criteria of Schedule 3 are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution [or in respect of any person who is or is to be a director, controller, manager or employee of the institution],
- (b) the institution has committed an offence under any provision of this Law or any Ordinance, regulation or rule made under it or has otherwise contravened any prohibition, restriction, condition, requirement,

direction or arrangement imposed by or under any such provision,

- (c) a person has become a controller of the institution in contravention of section 14 or has become or continued to be a controller after being given notice of objection under section 14 or 15,
- (d) the Commission has been provided with false, misleading, deceptive or inaccurate information by or on behalf of the institution or, in connection with an application for a banking licence, by or on behalf of a person who is or is to be a director, controller[, manager or employee] of the institution,
- (e) the interests of depositors or potential depositors of the institution are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason,
- (f) any fee prescribed by regulations under section 7 payable by the institution or in respect of the licence has not been paid,
- (g) where the institution's principal place of business is in a country outside the Bailiwick, the relevant supervisory authority in that country has withdrawn from the institution an authorisation corresponding to a banking licence under this Law,

- (h) a composition or arrangement with creditors has been made in respect of the institution, or a receiver has been appointed in respect of, or possession has been taken of, any property of the institution by or on behalf of creditors or debenture holders,
- (i) where the institution is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which corresponds as nearly as may be to any event described in paragraph (h), (k), (l) or (m),
- (j) the institution has not accepted a deposit in the Bailiwick in the course of carrying on a deposit-taking business (whether there or elsewhere) within a period of 12 months beginning on the day on which the banking licence was granted or, having accepted a deposit as aforesaid, has subsequently not done so for any period of more than six months,
- (k) the affairs of the institution have been declared in a state of "désastre" by arresting creditors at a meeting held before a Commissioner of the Court,
- (l) a preliminary vesting order has been made against the institution in respect of any real property in the Bailiwick, or
- (m) otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, a liquidator

(provisional or otherwise) has been appointed to act in relation to the institution's estate or affairs or it has passed a special resolution requiring it to be wound up voluntarily.

(2) A decision of the Commission to revoke a banking licence shall not have effect until the end of the period within which, under section 18, an appeal can be brought or, if an appeal is brought, until the appeal is determined or withdrawn.

(3) In considering whether or not to revoke a banking licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may lawfully have regard under section 6 when considering whether or not to grant an application for a banking licence.

NOTES

In section 8, the words in square brackets in paragraph (a) of subsection (1) were inserted, and the words in square brackets in paragraph (d) of subsection (1) were substituted, by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, respectively section 1(3) and section 1(4), with effect from 11th August, 2003.

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, regulation 1, with effect from 30th April, 2010, and notwithstanding the provisions of subsection (2) of this section, a decision of the Financial Services Commission to revoke a banking licence may have immediate effect, subject to the provisions of the said regulation 1.

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, with effect from 30th April, 2010, regulation 3, paragraph (a) and paragraph (c) of subsection (1) of this section shall apply in relation to a significant shareholder as they apply in relation to a shareholder controller.

Conditions of banking licences.

9. (1) The Commission may, when granting a banking licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensed institutions generally, to any class of licensed institution or to any particular licensed institution.

(3) The Commission may vary or rescind any condition of a banking licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a banking licence may make provision as to the duration of the licence and for the protection of the institution's depositors or potential depositors; and such conditions may –

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments,
- (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors,
- (d) prohibit the institution from entering into any other transaction or class of transactions,

- (e) require the removal of any director, controller[, manager or employee],
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution,
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
- [(h) prohibit, restrict or impose limitations on the carrying on of deposit-taking business, or any class or description of deposit-taking business, in or from within any place, or any particular place, outside the Bailiwick –
 - (i) by the institution itself,
 - (ii) by any undertaking established by the institution (including, without limitation, any branch or subsidiary thereof), or
 - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).]

(5) An institution which contravenes any condition of a banking licence is guilty of an offence.

(6) The contravention of a condition of a banking licence shall, whether or not constituting an offence under subsection (5), be a ground for the revocation of the licence but shall not invalidate any transaction completed under the authority of the licence before the date of revocation.

(7) An institution whose banking licence is subject to a condition as to its duration may apply under section 5 for a new banking licence and, if that licence is granted, the restricted licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a banking licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may lawfully have regard under section 6 or 8 when considering whether or not to grant an application for a banking licence or to revoke a banking licence.

NOTE

In section 9, the words in square brackets in paragraph (e) of subsection (4) were substituted, and paragraph (h) of subsection (4) was inserted, by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, respectively section 1(4) and section 1(5), with effect from 11th August, 2003.

Notice of refusal, etc, of banking licences.

10. (1) Where the Commission decides to refuse a banking licence or, otherwise than with the agreement of the licensed institution concerned, to revoke a banking licence or to impose, vary or rescind any condition in respect of a

banking licence, the Commission shall serve upon the institution concerned notice in writing of the decision setting out, where appropriate, particulars of the condition in question.

(2) A notice under subsection (1) shall state the grounds of the Commission's decision and shall give particulars of the right of appeal conferred by section 18.

(3) An institution upon which a notice under subsection (1) is served may require the Commission to furnish it with a written statement of the reasons for the decision.

(4) Where –

- (a) a ground for a decision mentioned in subsection (1) is that any criterion of paragraph 3 of Schedule 3 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) a condition of a banking licence requires the removal of any person as a director, controller[, manager or employee],

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 18.

NOTE

In section 10, the words in square brackets in paragraph (b) of subsection

(4) were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(6), with effect from 11th August, 2003.

Surrender of banking licences.

11. (1) A licensed institution may surrender its banking licence by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the institution may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is to take effect, not being earlier than the date upon which the first notice was served.

(3) The surrender of a banking licence shall be irrevocable unless it is expressed to take effect on a particular date and before that date the Commission by notice in writing to the institution allows the surrender to be withdrawn.

(4) Upon the surrender of a banking licence no fee paid by the licensed institution concerned pursuant to regulations under section 7 shall be refundable.

Directions

Directions to institutions.

12. (1) The Commission may –

- (a) when serving notice under section 10 upon an institution that the Commission proposes to revoke its banking licence,

- (b) at any time after such a notice has been served (whether before or after the banking licence is revoked),
- (c) at any time after an institution has served a notice under section 11 surrendering its banking licence (whether or not with immediate effect), or
- (d) in the case of an institution whose banking licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter,

give the institution such directions as appear to the Commission to be desirable in the interests of the institution's depositors or potential depositors, whether for the purpose of safeguarding its assets or otherwise.

(2) Without prejudice to the generality of subsection (1), directions thereunder may –

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) prohibit or impose limitations upon the acceptance or repayment of deposits, the granting of credit or the making of investments,
- (c) prohibit the institution from soliciting deposits either

generally or from persons who are not already depositors,

- (d) prohibit the institution from entering into any other transaction or class of transactions,
- (e) require the removal of any director, controller[, manager or employee].

(3) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1), and any direction given by virtue of either of those paragraphs shall cease to have effect, if –

- (a) the Commission serves upon the institution concerned notice in writing that it no longer proposes to revoke the institution's banking licence, or
- (b) the Commission's decision to revoke the institution's banking licence is reversed on appeal.

(4) No direction shall be given by virtue of paragraph (c) of subsection (1), and any direction given by virtue of that paragraph shall cease to have effect, if the Commission allows the institution, under section 11(3), to withdraw the surrender of its banking licence.

(5) No direction under subsection (1) shall be given to an institution after it has ceased to have any liability in respect of deposits in respect of which it had a liability at a time when it held a banking licence; and any direction in force in respect of an institution shall cease to have effect when the institution ceases to have any such liability.

(6) An institution which contravenes any provision of a direction under subsection (1) is guilty of an offence.

(7) A contravention by an institution of a direction under subsection (1) shall not invalidate any transaction completed under the authority of the banking licence held by the institution.

(8) Where a direction under subsection (1) requires the removal of a person as director, controller[, manager or employee] of an institution, the Commission shall serve upon that person a copy of the direction (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 18.

(9) The Commission may vary or rescind any direction under subsection (1) by notice in writing served upon the institution concerned.

NOTE

In section 12, the words in square brackets were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(6), with effect from 11th August, 2003.

Information as to institutions

Publication of names of licensed institutions.

13. [(1) The Commission shall cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of all institutions holding banking licences.]

(2) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a list of all institutions holding banking licences.

(3) The Commission shall publish the fact that an institution has ceased to hold a banking licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise.

(4) The Commission may also publish the fact that a particular person has been granted or refused a banking licence or that a particular person does not hold or has not held a banking licence.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

NOTE

In section 13, subsection (1) was substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010, section 2, with effect from 8th November, 2010.

Objection to controllers

Notification of and objection to controllers.

14. (1) No person shall become a shareholder controller or an indirect controller of a licensed institution incorporated in the Bailiwick unless he has notified the Commission in writing of his intention to become such a controller and the Commission has notified him in writing that there is no objection to his

becoming such a controller.

(2) Following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require him to furnish such additional information or documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection.

(3) The Commission may serve a notice of objection under this section if it is not satisfied –

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed institution,
- (b) that the interests of depositors and potential depositors of the licensed institution would not in any other manner be threatened by that person becoming a controller of that description, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as a controller of the description in question, the criteria of Schedule 3 would continue to be fulfilled in relation to that institution or, if any of those criteria is not so fulfilled, that that person is likely to undertake remedial action.

(4) A notice of objection under this section shall –

- (a) specify the matter mentioned in subsection (3) as to

which the Commission is not satisfied and, subject to subsection (5), the reasons why it is not satisfied,

- (b) give particulars of the right of appeal conferred by section 18.

(5) Subsection (4) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

NOTE

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, regulation 3, with effect from 30th April, 2010, this section shall apply in relation to a significant shareholder as it applies in relation to a shareholder controller.

Objection to existing controllers.

15. (1) Where in the opinion of the Commission a person who is a shareholder controller or an indirect controller of a licensed institution incorporated in the Bailiwick is not or is no longer a fit and proper person to be such a controller, the Commission may serve him with a written notice of objection.

(2) A notice of objection under this section shall –

- (a) subject to subsection (3), specify the reasons for the Commission's opinion, and
- (b) give particulars of the right of appeal conferred by section 18.

(3) Subsection (2)(a) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controllers.

16. A person who –

- (a) becomes a shareholder controller or an indirect controller in contravention of section 14(1), or
- (b) becomes or continues to be such a controller after a notice of objection has been served on him under section 14 or 15,

is guilty of an offence unless in the case of an offence under paragraph (a) he shows that he was not aware of the acts or circumstances by virtue of which he became a controller of the description in question; but in such a case he shall be guilty of the offence if he fails to give the Commission notice in writing of the fact that he has become a controller of the description in question within a period of 14 days immediately following the day on which he becomes so aware.

NOTE

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, regulation 3, with effect from 30th April, 2010, this section shall apply in relation to a significant shareholder as it applies in relation to a shareholder controller.

Restrictions on sale of shares.

17. (1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of section 14(1) or has

become or continued to be such a controller after a notice of objection has been served on him under section 14 or 15.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to all or any of the following restrictions –

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them, shall be void,
- (b) no voting right shall be exercisable in respect of those shares,
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder,
- (d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensed institution, whether in respect of capital or otherwise.

(3) The Court, on the application of the Commission, may order the sale of any specified shares to which this section applies and, if the shares are subject to restrictions under subsection (2), that they shall cease to be subject thereto.

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under section 14 or 15 –

- (a) until the end of the period within which an appeal can be brought against the notice of objection,
- (b) if such an appeal is brought, until the appeal is determined or withdrawn.

(5) Where an order is made under subsection (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold pursuant to an order under subsection (3), the proceeds of sale, less the costs of the sale, shall be paid to Her Majesty's Sheriff for the benefit of the persons beneficially interested in them; and any such person may apply to the Court for an order for the whole or part of the proceeds to be paid to him.

(7) This section applies –

- (a) to all shares in the licensed institution of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of that institution, and
- (b) in cases where the person in question became a controller of the relevant description of a licensed institution as a result of the acquisition by him or any associate of his of shares in another body corporate, to all shares in that body corporate which are held by him or any associate of his and which were not so held

before he became such a controller of that licensed institution.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed institution or body corporate to whose shares the notice relates and, if the notice relates to shares held by an associate of that person, on that associate.

NOTE

In accordance with the provisions of the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, regulation 3, with effect from 30th April, 2010, this section shall apply in relation to a significant shareholder as it applies in relation to a shareholder controller.

[Prohibition orders]

Power to make prohibition orders.

17A. (1) If it appears to the Commission, having regard to the provisions of paragraph 3 of Schedule 3, that an individual is not a fit and proper person to perform functions in relation to a deposit-taking business carried on by a licensed institution, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to –

- (a) any deposit-taking business, any specified deposit-taking business or any specified description of deposit-taking business,

- (b) licensed institutions generally or any specified class of licensed institution.

(3) An individual who performs or agrees to perform any function in breach of a prohibition order is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

(4) A licensed institution shall take reasonable care to ensure that none of its functions, in relation to the carrying on of a deposit-taking business, is performed by a person who is prohibited from performing that function by a prohibition order.

(5) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.

(6) In this section "**specified**" means specified in a prohibition order.]

NOTE

Section 17A, and the heading thereto, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(7), with effect from 11th August, 2003.

List of prohibition orders.

17B. (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions or description of functions which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish –

(a) the list referred to in subsection (1), and

(b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.]

NOTE

Section 17B was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(7), with effect from 11th August, 2003.

[Right to make representations as to prohibition orders.]

17C. (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing –

- (a) stating that the Commission is proposing to make a prohibition order against him,
- (b) stating the terms of, and the grounds for, the proposed prohibition order,
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine, and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the public interest or in the interests of the reputation of the Bailiwick as a finance centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against any individual, it shall serve on him notice in writing of the decision –

- (a) stating the terms of, and the grounds for, the prohibition order, and
- (b) giving particulars of the right of appeal conferred by this Law.]

NOTE

Section 17C was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(7), with effect from 11th August, 2003.

Appeals

Rights of appeal.

- 18.** (1) A person aggrieved by a decision of the Commission –
- (a) to refuse an application by him for a banking licence,
 - (b) to revoke his banking licence,
 - (c) to impose or vary any condition in respect of his banking licence, or

- (d) to give him directions under section 12 or to vary any direction so given,
- [(dd) to serve a notice of objection upon him under section 14 or 15,
- (ee) to give him a direction under section 17(2),]
- [(e) to make a prohibition order under section 17A prohibiting him from performing any function, any specified function or any specified description of function, [...]
- (f) to refuse to vary or revoke any such order under section 17A(5),]
- [(g) to maintain a direction under section 19(10),
- (h) to serve a notice under section 25,
- (i) to appoint an inspector under section 27(1), or
- (j) to issue a notice under section 28(1),]

may appeal to the Court against the decision.

(2) Where –

- (a) a ground for a decision described in subsection (1)(a),
- (b) or (c) is that mentioned in section 10(4)(a), or

- (b) the effect of a decision described in subsection (1)(c) or (d) is to require the removal of a person as director, controller or manager [or employee] of the institution,

the person to whom the ground relates or whose removal is required may appeal to the Court against the finding that there is a ground for the decision or, as the case may be, against the decision to require his removal.

(3) ...

[(4) The grounds of an appeal under this section are that –

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.]

(5) An appeal under this section shall be instituted –

- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision or, as the case may be, the notice of objection,

- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(6) If an appeal under this section is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, the Commission may apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may dismiss the appeal or make such other order as it considers just.

[(7) On an appeal under this section the Court may –

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.]

(8) On an appeal under this section against a decision described in subsection (1)[...[...]] the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition[, direction[, notice, appointment] or order] in question, or the variation thereof, pending the determination of the appeal.

(9) A decision of the Court under this section shall be final as to a question of fact, but an appeal shall lie to the Court of Appeal on a question of law within such period and in such manner as may be prescribed by Order of the

Royal Court.

NOTES

In section 18,

paragraph (dd) and paragraph (ee) of subsection (1) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 3(a), with effect from 29th October, 2008;

paragraph (e) and paragraph (f) of subsection (1) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 11th August, 2003;

paragraph (g), paragraph (h), paragraph (i) and paragraph (j) of subsection (1) were inserted, and the word omitted in square brackets in paragraph (e) thereof was repealed, by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, respectively section 3(c) and section 3(b), with effect from 29th October, 2008;

the words in square brackets in paragraph (b) of subsection (2) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(9), with effect from 11th August, 2003;

subsection (3) was repealed, and subsection (4) and subsection (7) were substituted, by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, respectively section 3(d), section 3(e) and section 3(f), with effect from 29th October, 2008;

the letter and brackets omitted in the first pair of square brackets in subsection (8), and the letters, brackets and punctuation omitted in the square brackets within the first pair of square brackets in subsection (8) (which latter were originally substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10)(a), with effect from 11th August, 2003) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 3(g)(i), with effect from 29th October, 2008;

the words in the second pair of square brackets in subsection (8) were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10)(b), with effect from 11th August, 2003;

the words in square brackets within the second pair of square brackets in subsection (8) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 3(g)(ii), with

effect from 29th October, 2008.

Invitations to make deposits

Control of advertising.

19. (1) [The Policy Council] may after consultation with the Commission make regulations in respect of the issue, form and content of deposit advertisements.

(2) Regulations under this section may, without prejudice to the generality of subsection (1) –

- (a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise),
- (b) make provision as to the matters which must or which may not be included in deposit advertisements,
- (c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission.

(3) Subject to subsection (4), a person who issues or causes to be issued, in the Bailiwick, an advertisement the issue of which is prohibited by regulations under this section or which otherwise contravenes any provision of such regulations is guilty of an offence.

(4) A person whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under subsection (3) if he proves that he received the advertisement for publication in the ordinary course of his business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he did not know and had no reason to believe that publication of the advertisement would constitute an offence.

(5) In this section a "**deposit advertisement**" means any advertisement containing –

- (a) an invitation to make a deposit, or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit,

and for the purposes of this section an "**advertisement**" includes any means of bringing such an invitation or such information to the notice of the persons to whom it is addressed or directed; and references to the issue of an advertisement shall be construed accordingly.

(6) For the purposes of this section –

- (a) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited,

- (b) the issue of an advertisement inviting deposits with a person specified in the advertisement shall, unless the contrary is proved, be presumed to have been caused by that person,
- (c) an advertisement issued outside the Bailiwick shall be deemed to have been issued in the Bailiwick if it is directed to persons in the Bailiwick, or if it is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Bailiwick or a sound or television broadcast transmitted principally for reception outside the Bailiwick.

(7) If the Commission considers that any deposit advertisement issued or proposed to be issued is misleading, the Commission may give the advertiser a direction under this section.

(8) A direction under this section may contain any or all of the following –

- (a) a prohibition on the issue of any advertisements or any advertisements of a specified description,
- (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction,

- (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified description,
- (d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner.

(9) A direction under this section shall have immediate effect, shall state the reasons for being given, shall give particulars of the rights conferred by subsection (10) and, if given orally, shall be confirmed by the Commission in writing not later than the next working day.

(10) An advertiser to whom a direction is given under this section may make written representations to the Commission; and the Commission shall, within a period of 7 days immediately following the day upon which the representations were made, take the representations into account in deciding whether to maintain or revoke the direction.

(11) A direction under this section may be varied by a further direction or revoked by the Commission by notice in writing to the advertiser concerned.

(12) A person who issues or causes to be issued, in the Bailiwick or elsewhere, an advertisement the issue of which is prohibited by a direction under this section or which otherwise contravenes any provision of such a direction is guilty of an offence.

NOTES

In section 19, the words "The Policy Council" in square brackets in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

The following Regulations have been made under section 19:

Banking Supervision (Bailiwick of Guernsey) Regulations, 1994.

Unsolicited calls.

20. (1) [The Policy Council] may after consultation with the Commission make regulations in respect of the making of unsolicited calls on persons in the Bailiwick, or from the Bailiwick on persons elsewhere, with a view to procuring the making of deposits.

(2) Regulations under this section may, without prejudice to the generality of subsection (1) –

- (a) prohibit the soliciting of deposits from, and the making of agreements with a view to the acceptance of deposits from, persons on whom unsolicited calls are made and the procuring of such persons to make deposits or to enter into such agreements,
- (b) specify persons by whom or circumstances in which unsolicited calls may be made,
- (c) require specified information to be disclosed to persons on whom unsolicited calls are made.

(3) A person who contravenes any regulation under this section is guilty of an offence.

(4) In this section "**unsolicited call**" means a personal visit or oral communication made without express invitation.

NOTE

In section 20, the words "The Policy Council" in square brackets in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

Fraudulent inducement to make deposit.

21. (1) A person who –

- (a) makes a statement, promise or forecast which he knows or has reasonable cause to believe to be misleading, false, inaccurate or deceptive, or dishonestly conceals any material facts, or
- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false, inaccurate or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) –

- (c) to make, or refrain from making, a deposit with him or any other person, or
- (d) to enter or refrain from entering into an agreement for the purpose of making such a deposit.

(2) This section does not apply unless –

- (a) the statement, promise or forecast is made, or the facts are concealed, in or from the Bailiwick or arrangements are made in or from the Bailiwick for the statement, promise or forecast to be made or the facts to be concealed,
- (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick, or
- (c) the deposit is or would be made, or the agreement is or would be entered into, in the Bailiwick.

(3) For the purposes of this section the expression "**deposit**" shall be deemed to include any sum that would otherwise be excluded by section 2(3).

Notification of certain matters

Notification of change of director, etc.

22. (1) Subject to subsection (3), a licensed institution shall give notice in writing to the Commission of the fact that any person has become or has ceased to be a director, controller or manager of the institution.

(2) A notice required to be given under subsection (1) shall be given within a period of 14 days immediately following the day on which the institution becomes aware of the relevant fact.

(3) The Commission may by notice in writing exempt from the obligation imposed by subsection (1), either wholly or in part, any licensed institution whose principal place of business is outside the Bailiwick.

(4) A licensed institution which fails to give notice in accordance with this section is guilty of an offence.

[Approval of appointment of director, etc.]

22A. (1) Without prejudice to any other provision of this Law, a licensed institution shall, before effecting any appointment of director or manager, notify the Commission of the proposed appointment and obtain the Commission's written approval thereto: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed institution from all or any of the requirements of this subsection, either generally or in any particular case or class of case.

(2) For the purposes of subsection (1), the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of receipt by the Commission of written notification of the proposed appointment unless, before the expiration of that period, the Commission serves notice on the licensed institution concerned that it does not approve the appointment.]

NOTE

Section 22A was inserted by the Banking Supervision (Bailiwick of

Guernsey) (Amendment) Law, 2003, section 1(11), with effect from 11th August, 2003.

Notification of acquisition of significant shareholding.

23. (1) A person who becomes a significant shareholder in relation to a licensed institution incorporated in the Bailiwick shall, within a period of 14 days immediately following the day of that event, give notice in writing of the event to the Commission.

(2) For the purposes of this Law a "**significant shareholder**", in relation to an institution, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5 per cent or more but less than 15 per cent of the voting power in general meeting of that institution or of any other institution incorporated in the Bailiwick of which that institution is a subsidiary.

(3) A person who fails to give notice in accordance with subsection (1) is guilty of an offence unless he shows that he was not aware that the facts were such as to require the giving of such notice; but in such a case he shall be guilty of the offence if he fails to give such notice within a period of 14 days immediately following the day upon which he becomes so aware.

Reports of large exposures.

24. (1) A licensed institution other than one whose principal place of business is outside the Bailiwick shall make a report to the Commission if it proposes to enter into transactions relating to any one person which, either alone or together with previous transactions entered into by it in relation to that person, would result in its being exposed to a risk of incurring losses in excess of 25 per cent of its capital base.

(2) Subsection (1) applies also where the transactions relate to

different persons who are connected in such a way that the financial soundness of any of them may affect the financial soundness of the others or the same factors may affect the financial soundness of them all.

(3) If a licensed institution to which subsection (1) applies has subsidiaries which are not licensed institutions, the Commission may by notice in writing to the licensed institution direct that subsection (1) shall apply to it as if the transactions and capital base of the subsidiaries, or such of them as are specified in the notice, were included in those of the institution.

(4) The reports required to be made under subsection (1) shall be made before the transactions are entered into or at such time (if any) after the transactions are entered into as may be specified by notice in writing given by the Commission to the institution; and such reports shall be in such form and shall contain such particulars as the Commission may reasonably require.

(5) An institution which fails to make a report in accordance with this section is guilty of an offence unless it shows that it was not aware that the facts were such as to require the making of the report; but in such a case the institution shall be guilty of the offence if it fails to make the report within a period of 7 days immediately following the day upon which it becomes so aware.

(6) The Commission, upon becoming aware (whether upon receipt of a report under subsection (1) or otherwise) –

- (a) of a proposal to enter into a transaction described in subsection (1),
- (b) that such a transaction has been entered into,

may require the institution concerned and any relevant subsidiary thereof to make such arrangements within such time as may appear to the Commission to be desirable for the protection of the institution's capital base.

(7) An arrangement under subsection (6) shall be notified in writing by the Commission to the institution concerned; and the institution shall comply with the arrangement in all respects.

(8) Any question as to whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Commission or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.

(9) For the purposes of this section, the capital base of an institution (or, in a case within subsection (3), of an institution and its relevant subsidiaries) and the value of that capital base at any time shall be determined by the Commission and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Commission after consultation with the institution concerned and in accordance with principles published by the Commission.

(10) The principles referred to in subsections (8) and (9) may make different provisions for different cases; and those referred to in subsection (8) may in particular exclude from consideration, in whole or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.

(11) [The Policy Council] may, after consultation with the Commission, by regulation –

- (a) amend subsection (1) so as to substitute, for the percentage for the time being specified therein, some other percentage,
- (b) make provision for determining for the purposes of this section whether a transaction entered into by an institution relates to any person, and
- (c) make provision in respect of the transactions and risks to be taken into account for the purposes of this section.

NOTE

In section 24, the words "The Policy Council" in square brackets in subsection (11) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

Obtaining of information

Power to obtain information and documents.

25. (1) The Commission may [...] by notice in writing served on a licensed institution require the institution to provide the Commission –

- (a) at such times or intervals and in respect of such periods as may be specified in the notice, with such

information as the Commission may reasonably require for the performance of its functions under this Law,

- (b) with a report, in such form as may be specified in the notice, by a person who is an accountant or has relevant professional skill and who is nominated or approved by the Commission on, or on any aspect of, any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may [...] –

- (a) by notice in writing served on a licensed institution, require it to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,
- (b) authorise any of its officers, servants or agents, on producing evidence of his authority, to require a licensed institution to furnish him forthwith with such information and documents as he may specify,

being such information or documents as the Commission may reasonably require for the performance of its functions under this Law.

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a licensed institution, the Commission or that officer, servant or agent shall have the

like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The power conferred by this section to require an institution or other person to produce any documents includes power –

- (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, the institution in question, to provide an explanation of them, and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If it appears to the Commission to be desirable in the interests of the depositors or potential depositors of a licensed institution to do so, the Commission may also exercise the powers conferred by this section in relation to any body corporate which is or has at any relevant time been –

- (a) a holding company, subsidiary or related company of the licensed institution,
- (b) a subsidiary of a holding company of the licensed institution,

- (c) a holding company of a subsidiary of the licensed institution, or
- (d) a body corporate in the case of which a shareholder controller of the licensed institution, alone or with associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting.

(6) For the purposes of this Law a **"related company"**, in relation to an institution, means any body corporate (other than one which is a group company in relation to that institution) in which that institution holds for a significant period a qualifying capital interest for the purpose of securing a contribution to that institution's own activities by the exercise of any control or influence arising from that interest.

(7) For the purposes of this Law a **"qualifying capital interest"** means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(8) Where –

- (a) an institution holds a qualifying capital interest in a body corporate, and
- (b) the nominal value of any relevant shares in that body corporate held by that institution is equal to 20 per cent or more of the nominal value of all relevant shares in that body corporate,

the institution shall be presumed to hold that interest on the basis and for the purpose mentioned in subsection (6), unless the contrary is shown; and in this subsection "**relevant shares**" means, in relation to any body corporate, any such shares in that body corporate as are mentioned in subsection (7).

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

(10) The Commission may, by notice in writing served on any person who is or is to be a director, controller or manager [or employee] of a licensed institution, require him to furnish the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(11) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to any person who is a significant shareholder of a licensed institution if the Commission considers that it is desirable to do so in the interests of the depositors or potential depositors of that institution.

(12) A person who without reasonable excuse, proof whereof shall lie on him, fails to comply with a requirement imposed on him under this section is guilty of an offence.

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

- (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 subsection (12) or section 47(1)(b) (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.]

[(13A) ...]

(14) 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.

NOTES

In section 25,

the words omitted in square brackets in subsection (1) and subsection (2) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, respectively section 1(12) and section 1(13), with effect from 11th August, 2003;

the words in square brackets in subsection (10) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(14), with effect from 11th August, 2003;

subsection 13 was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;²

subsection (13A) (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 2, with effect from 25th February, 2009) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[Power of Bailiff to grant warrant.]

- 26.** (1) If the Bailiff is satisfied by information on oath –
- (a) that a notice has been served under section 25 on any licensed institution and that there are reasonable grounds for suspecting –
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
 - (ii) that there has been a failure by that institution to comply with any other requirement imposed

by or under section 25, or

- (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii),
- (b) that it is not practicable to serve a notice under section 25, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 26A.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 27 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

- (a) that an offence under this Law has been committed in relation to the investigation,

- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation, or
- (c) that, if a warrant were not granted –
 - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed, or
 - (ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 26A.]

NOTE

Section 26 was substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 5, with effect from 29th October, 2008.³

[Powers conferred by Bailiff's warrant granted under section 26.]

26A. (1) A warrant granted under section 26(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the institution upon

whom the notice under section 25 was or could be served,

- (ii) upon which the documents to which the notice under section 25 relates are reasonably believed to be, or
- (iii) where no notice under section 25 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents –

- (i) which were required by the notice under section 25, or
- (ii) where no notice under section 25 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 25,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer any questions which could have been put to the person under section 25,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(2) A warrant granted under section 26(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the person being investigated by inspectors under section 27, or
 - (ii) upon which any documents to which the investigation under section 27 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 27, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer any questions relevant to the investigation under section 27,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) A warrant granted under section 26 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant granted under section 26 may be retained –

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any

time thereafter, direct, or

- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 26 is guilty of an offence.

[(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 26 –

- (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 subsection (5) or section 47(1)(b) (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.]

[(7) ...]]

NOTES

Section 26A was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 5, with effect from 29th October, 2008.

In section 26A,

subsection (6) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;⁴

subsection (7) (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 3, with effect from 25th February, 2009) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Investigations by inspectors.

27. (1) The Commission may, [...] if it considers it desirable to do so in the interests of the depositors or potential depositors of a licensed institution, 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 subsection (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, employee, agent, banker, auditor, advocate or other legal adviser of an institution being investigated under subsection (1) or (2), or who has been appointed to make a report in respect of that institution under section 5(5) or section 25(1)(b), or who is a significant shareholder in relation to that institution –

- (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 section shall apply in relation to a former licensed institution as they apply in relation to a licensed institution.

(6) ...

(7) An inspector shall, if so required, produce evidence of his

authority.

(8) A person who without reasonable excuse, proof whereof shall lie on him –

- (a) contravenes any provision of subsection (4), or
- (b) obstructs or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred by this section,

is guilty of an offence.

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

- (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 subsection (8) or section 47(1)(b) (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.]

[(9A) ...]

(10) 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.

NOTES

In section 27,

the words omitted in square brackets in subsection (1) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(16), with effect from 11th August, 2003;

subsection (6) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 6(a), with effect from 29th October, 2008;

subsection (9) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;⁵

subsection (9A) (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 4, with effect from 25th February, 2009) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Investigation of suspected offences.

28. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1 or 21, the Commission may [...] by notice in writing require that person or any other person –

- (a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence,
- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his authority –

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1),

(b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document,

(c) ...

(3) A person who without reasonable excuse, proof whereof shall lie on him, fails to comply with any requirement of a notice under subsection (1) or obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

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

(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 subsection (3) or

section 47(1)(b) (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.]

[(4A) ...]

(5) 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.

NOTES

In section 28,

the words omitted in square brackets in subsection (1) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(17), with effect from 11th August, 2003;

paragraph (c) of subsection (2) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 7(a), with effect from 29th October, 2008;

subsection (4) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section

1, Schedule, with effect from 5th August, 2010;⁶

subsection (4A) (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 5, with effect from 25th February, 2009) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Power of entry in cases of suspected offences.

29. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 1 or 21 and that –

- (a) a person has failed to comply with any requirement of a notice under section 28(1),
- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice,
- (c) it is not practicable to serve a notice under section 28(1), or
- (d) there are reasonable grounds for suspecting that if such a notice were served –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or

- (iii) the service of the notice might seriously prejudice the investigation,

he may grant a warrant under this section.

(2) A warrant under this section shall authorise any officer of police, together with any other person named in the warrant –

- (a) to enter any premises specified in the warrant, being premises –

- (i) which are occupied by the person upon whom the notice under section 28(1) was served,

- (ii) upon which the documents to which the notice relates are reasonably believed to be, or

- (iii) in cases where no such notice has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in the warrant –
 - (i) to answer questions relevant for determining whether he or any other person has committed an offence under section 1 or 21,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) A warrant under this section shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under this section may be retained –

- (a) for a period of three months [or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct], or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for an offence under section 1 or 21, until the conclusion of those proceedings.

(5) A person who without reasonable excuse, proof whereof shall lie on him, obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any right conferred by a warrant under this section is guilty of an offence.

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

(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 subsection (5) or section 47(1)(b) (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.]

[(7) ...]

NOTES

In section 29,

the words in square brackets in paragraph (a) of subsection (4) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 8(a), with effect from 29th October, 2008;

subsection (6) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;⁷

subsection (7) (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 6, with effect from 25th February, 2009) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Falsification, etc, of documents during investigation.

30. A person –

- (a) who knows or has reasonable grounds to suspect that an investigation is being or is likely to be carried out under section 27 or 28, and
- (b) who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be

falsified, concealed, destroyed, removed or otherwise disposed of, the documents which he knows or has reasonable grounds to suspect are or would be relevant to such an investigation,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

Accounts and Auditors

Audited accounts to be available for inspection.

31. (1) A licensed institution shall at each of its offices in the Bailiwick at which it holds itself out as accepting deposits –

- (a) keep a copy of its most recent audited accounts including, in the case of an institution incorporated in the Bailiwick, the auditors' report on the accounts and, in the case of any other institution whose accounts are audited, the report of the auditors, and
- (b) during normal business hours make that copy available for inspection by any person on request.

(2) The Commission may make rules prescribing the form in which the accounts and reports described in subsection (1)(a) are to be, the information and particulars to be contained in them and the times or intervals at which they are to be drawn up; and rules under this subsection may also make provision in respect of the delivery of such accounts and reports to such persons and at such times or intervals as may be prescribed.

(3) The Commission may in its absolute discretion waive any requirement of subsection (1)(a) and of any rules under subsection (2) and instead require the institution to keep at each of its offices in the Bailiwick at which it holds itself out as accepting deposits an abridged version of the accounts or reports described in subsection (1)(a) in such form and containing such information and particulars as the Commission may require.

(4) An institution which contravenes any provision of this section or of any rules made under it or any requirement imposed by or under this section is guilty of an offence.

NOTE

The following Rules have been made under section 31:

Banking Supervision (Accounts) Rules, 1994.

Notification in respect of auditors.

32. (1) A licensed institution incorporated in the Bailiwick shall forthwith give notice in writing and explanation to the Commission –

- (a) if the institution proposes to give special notice to its shareholders of a resolution removing an auditor before the expiration of his term of office,
- (b) if the institution gives notice to its shareholders of a resolution replacing an auditor at the expiration of his term of office, or
- (c) if a person ceases to be an auditor of the institution

otherwise than pursuant to such a resolution.

(2) An auditor of a licensed institution appointed under or in accordance with the requirements of any provision of this Law or of any enactment relating to companies in force in the Bailiwick or any part thereof shall forthwith give notice in writing and explanation to the Commission if he –

- (a) resigns before, or does not seek re-appointment upon, the expiration of his term of office,
- (b) decides to include in his report on the institution's accounts any qualification as to any matter.

(3) The provisions of this section shall apply in relation to a former licensed institution as they apply in relation to a licensed institution.

(4) An institution which or an auditor who contravenes this section is guilty of an offence.

Communications by auditors to Commission.

33. (1) No duty to which an auditor of a licensed institution or a person appointed to make a report under section 5(5) or section 25(1)(b) is subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission under this Law.

(2) In relation to an auditor of a licensed institution, this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the institution or any associated body

thereof.

(3) In relation to a person appointed to make a report under section 5(5) or 25(1)(b), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which –

- (a) relates to the business or affairs of the institution in relation to which his report is made or any associated body thereof, or
- (b) if his report relates to an associated body of an institution, relates to the business or affairs of that body.

(4) In this section the expression "**associated body**" means, in relation to an institution, any such body as is described in section 25(5).

(5) If it appears to [the Policy Council] after consultation with the Commission that any accountants or class thereof to whom subsection (1) applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in that subsection, [the Policy Council] may, after consultation with the Commission in relation to the views of such bodies as appear to the Commission to represent the interests of accountants and licensed institutions, by regulation specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it shall be the duty of any accountant to whom the regulations apply to communicate a matter to the Commission in the circumstances specified in the regulations.

(6) This section applies in relation to the auditor of a former

licensed institution as it applies in relation to the auditor of a licensed institution.

NOTES

In section 33, the words "the Policy Council" in square brackets in subsection (5) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

The following Regulations have been made under section 33:

Banking Supervision (Bailiwick of Guernsey) Regulations, 1994.

[Making of Rules

Rules of the Commission.

33A. The Commission may make rules 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.]

NOTE

Section 33A, and the cross-heading thereto, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

[Particular matters that may be covered by rules.

33B. Rules under section 33A may, without limitation –

- (a) set out general conditions applicable to licensed institutions (and accordingly make provision for

matters in respect of which conditions may be imposed under section 9),

- (b) prescribe the manner in which licensed institutions must conduct, govern, manage and operate their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of depositor assets, financial resources, the calculation of technical provisions and capital requirements),
- (c) prohibit licensed institutions from carrying on, or holding themselves out as carrying on, deposit-taking business –
 - (i) of any specified class or description,
 - (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
 - (iii) in relation to persons of a specified class or description or persons other than those of a specified class or description,
- (d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensed institutions of any discretionary powers afforded to them by depositors or customers,

- (e) require licensed institutions to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of deposit-taking business, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed institutions and their servants and agents and, without limitation, require licensed institutions to impose and enforce restrictions on the activities carried on by their servants and agents,
- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of deposit-taking business,
- (h) require specified information to be given in the form and manner and at the time specified by or under the rules –
 - (i) to the Commission,
 - (ii) to the public, or
 - (iii) to any prescribed class or description of persons,
- (i) require licensed institutions to make provision for the protection of depositors and customers in the event of the cessation of any business or any class or

description of business carried on by them,

- (j) impose requirements as to the places and manner in which, and the times during which, banking licences are to be displayed or available for inspection by the public,
- (k) make provision as to the settlement of disputes,
- (l) require the public disclosure by licensed institutions of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation –
 - (i) information on the financial position and financial performance of licensed institutions,
 - (ii) information on the basis, methods and assumptions on which any information is prepared,
 - (iii) information on risk exposures and the management thereof, and
 - (iv) information on management and corporate governance, and
- (m) make provision as to the dealings and relationship of licensed institutions with other licensed institutions, other persons carrying on deposit-taking business,

depositors, customers and the Commission.]

NOTE

Section 33B was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

[General provisions as to Rules

Making, publication and effect of contravention of rules.

33C. (1) Before making any rules under this Part of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of depositors or customers or potential depositors or customers, publish proposals for the rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.

(2) Rules under this Part of this Law shall be made by an instrument in writing which shall –

- (a) specify the provisions of this Law under which the rules are made, and
- (b) be made available to the public in such manner, and on such terms as to payment or otherwise, as the Commission considers appropriate.

(3) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a rule under section 33A does not of itself render him liable to any proceedings, but –

- (a) the Commission, in the exercise of its powers conferred by or under –
 - (i) this Law or any Ordinance, regulation or rule made under it, or

(ii) the regulatory Laws,

may take the rule and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings (criminal or otherwise), whether or not under this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question.]

NOTE

Section 33C, and the cross-heading thereto, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

Miscellaneous powers of Commission

Repayment of unauthorised deposits and profits.

34. (1) If on the application of the Commission it appears to the Court that a person has accepted deposits in contravention of this Law, the Court may –

(a) order him and any other person who appears to the Court to have been knowingly concerned in the

contravention to repay the deposits forthwith or at such time as the Court may direct, or

- (b) appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover those deposits.

(2) If on the application of the Commission it appears to the Court that profits have accrued to a person as a result of deposits having been accepted in contravention of this Law, the Court may order him to pay to Her Majesty's Sheriff, or may appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover from him, such sum as appears to the Court to be just having regard to the profits appearing to the Court to have accrued to him.

(3) In deciding whether and on what terms to make an order under this section the Court shall have regard to the effect that payment or repayment pursuant to the order would have on the solvency of the person concerned and on his ability to carry on his business in a manner satisfactory to his creditors.

(4) Any amount paid to Her Majesty's Sheriff or recovered by a receiver pursuant to subsection (2) shall be distributed among such persons as the Court may direct, being persons appearing to the Court to have made the deposits as a result of which the profits accrued or such other persons as the Court thinks just.

(5) On an application under subsection (2) the Court may require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what profits have accrued to him as mentioned in that subsection and for determining how any amounts are to be distributed under

subsection (4); and the Court may require any such accounts or information to be verified in such manner as it may direct.

Injunctions to restrain unlawful deposit-taking, etc.

35. (1) If on the application of the Commission the Court is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene section 1, 21, 37 or 41, a direction under section 12 or 19, a regulation under section 19 or 20 or an arrangement under section 24(8), or
- (b) a person may have been guilty of such a contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have been guilty of a contravention mentioned in subsection (1)(a), the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed

of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

(4) The powers conferred upon the Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987^c; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions under this section.

(5) An application by the Commission for an injunction under this section may, with the approval of the Court, be made ex parte.

Winding-up on application of Commission.

36. The Court (or, in the case of a company registered in Alderney, the Court of Alderney), on the application of the Commission under this section, may order the winding-up of a licensed institution, a former licensed institution or an institution (licensed or not) which is guilty of any such contravention as is described in section 35(1)(a) if –

- (a) the institution is unable to pay its debts within the meaning of Article LXXII of the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée registered on the 21st March, 1908^d or, in the case of a company registered in Alderney, section 2(2) of the

^c Ordres en Conseil Vol. XXX, p. 145.

^d Ordres en Conseil Vol. IV, p. 178.

Companies (Amendment) (Alderney) Law, 1962^e,

- (b) the institution has defaulted in an obligation to pay any sum due and payable in respect of a deposit; and for the purposes of this section the expression "deposit" shall be deemed to include any sum that would otherwise be excluded by section 2(3)(a), (b) or (c), or
- (c) the Court is of the opinion that it is just and equitable that the institution should be wound up,

and where such an order is made, the provisions of the Companies (Guernsey) Laws or, as the case may be, the Companies (Alderney) Laws shall apply accordingly.

NOTES

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1908 has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Companies (Amendment) (Alderney) Law, 1962 has since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

^e Ordres en Conseil Vol. XIX, p. 33.

[Provision as to codes of practice, etc.]

36A. (1) The Commission, after consultation with –

- (a) [the Policy Council], the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark, and
- (b) such other persons as appear to the Commission to be appropriate including, without limitation, persons representative of that part of the Bailiwick's financial services industry which carries on business regulated by this Law,

may issue such codes of practice as the Commission thinks necessary –

- (i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to depositor, customer and client protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by persons carrying on business regulated by this Law,
- (ii) generally for the purposes of this Law.

(2) A code issued under this Law may contain such transitional or savings provisions as appear to the Commission to be necessary or expedient.

(3) The Commission may, after consultation as mentioned in subsection (1), revise the whole or any part of a code issued under this Law and issue that revised code.

(4) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision of a code issued under this Law shall not of itself render him liable to any criminal proceedings; but –

(a) the Commission, in the exercise of its powers conferred by or under –

(i) this Law or any Ordinance, regulation or rule made under it, or

(ii) the regulatory Laws,

may take the provision of the code and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings (criminal or otherwise), whether or not under this Law, the provision of the code shall be admissible in evidence, and if the provision appears to the court or other tribunal before

which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.]

NOTES

Section 36A was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(18), with effect from 11th August, 2003.

In section 36A,

the words "the Policy Council" in square brackets in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words "Policy and Performance Committee" in the second pair of square brackets in subsection (1) were substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.⁸

[General requirements for licensed institutions]

Minimum capital requirement for licensed institutions.

36B. (1) A licensed institution which is a Bailiwick company shall maintain a paid up share capital of not less than the minimum capital requirement or an equivalent sum in any currency acceptable to the Commission.

(2) For the purposes of this section the equivalent sum in any currency acceptable to the Commission of the value specified, whether in sterling or in any other currency, as the minimum capital requirement shall be calculated in respect of any particular day at the exchange rate between the relevant currencies prevailing at the close of that day.

(3) In computing, for the purposes of subsection (1), the paid up share capital of a company, use of the share premium account is permitted.

(4) In this section –

"Bailiwick company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of –

(a) section 117(1) of the Companies (Guernsey) Law, 1994, or

(b) section 163(1) of the Companies (Alderney) Law, 1994,

"minimum capital requirement" means £1,000,000 or such other sum as the Commission may by regulation prescribe.]

NOTES

Section 36B, and the heading thereto, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(18), with effect from 11th August, 2003.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

[Annual review by licensed institutions.]

36C. (1) Without prejudice to any other requirement of or under this Law, a licensed institution shall review, in connection with business carried on in or from within the Bailiwick by the institution or by any subsidiary thereof, not less than once in every financial year –

- (a) the institution's individual loans, asset classification and loss provisioning (including on and off balance sheet exposures),
- (b) whether the institution has in place control systems which are effective to ensure –
 - (i) that all returns and other documents required by or under this Law to be submitted to the Commission are duly submitted, and
 - (ii) that any inaccuracies in any such returns and other documents are identified, corrected and reported to the Commission expeditiously,
- (c) whether the institution's financial record keeping systems and data systems are reliable,

- (d) whether any activity has been entered into in the course of the institution's business in respect of which no director of the institution has a sound knowledge,
- (e) the responsibilities and conduct of the institution's board of directors with respect to corporate governance principles,
- (f) whether there has been effective control by the institution's board of directors over every aspect of risk management, and
- (g) the institution's control environment.

(2) Not more than fifteen months shall elapse between the completion of any two successive annual reviews.

(3) A licensed institution shall, within such period as the Commission may require, provide the Commission with a copy of the annual review.

(4) If an annual review reveals shortcomings or deficiencies in respect of any of the matters set out in subsection (1), the licensed institution shall immediately report the shortcomings or deficiencies to the Commission together with details of the steps it proposes to take to remedy the position.

(5) In this section –

"annual review" means the review required to be carried out by a

licensed institution under this section,

"financial year" means the period covered by a licensed institution's accounts in respect of its business.]

NOTE

Section 36C was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(18), with effect from 11th August, 2003.

PART II

BANKING DESCRIPTIONS AND NAMES

Restrictions on use of certain descriptions and names.

37. (1) No person carrying on any business in the Bailiwick, other than a licensed institution, a person specified in paragraph 2, 3, 4 or 5 of Schedule 1 or a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission, shall so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language) that he is a bank or banker or is carrying on a banking business.

(2) No person carrying on any business in the Bailiwick, other than a licensed institution, a person specified in paragraph 2 or 3 of Schedule 1 or a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission, shall use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that he is a bank or banker or is carrying on a banking business.

(3) No person other than a licensed institution shall describe himself as a licensed institution or so hold himself out as to indicate or reasonably be understood to indicate that he is a licensed institution.

(4) No person shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed institution to accept a deposit in the course of carrying on a business which for the purposes of this Law is a deposit-taking business.

(5) A person who contravenes any provision of this section is guilty of an offence.

Permission to use certain descriptions or names.

38. (1) A person wishing to obtain permission for the purposes of section 37 shall apply in that behalf to the Commission.

(2) An application under subsection (1) shall be made in such form and manner and shall be accompanied by such information and documents as the Commission may require and by such fee as may be prescribed by regulations of [the Policy Council] made after consultation with the Commission; and the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable.

(3) The Commission may, upon receipt of an application under subsection (1), grant the application unconditionally or subject to such conditions as it may consider necessary or expedient, or refuse the application.

NOTE

In section 38, the words "the Policy Council" in square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

Commission may object to certain names.

39. (1) Where a person applies for a banking licence under this Law he shall give notice in writing to the Commission of any name he is using or proposing to use in connection with any business carried on by him and the Commission may, by notice in writing served upon him, object to that name.

(2) Where a licensed institution proposes to change any name it uses for the purposes of or in connection with any business carried on by it, it shall give notice in writing to the Commission of the proposed name and the Commission may, within a period of 28 days immediately following the receipt by it of such notice, by notice in writing served upon the institution object to the proposed name.

(3) The Commission shall not give notice objecting to a name under subsection (1) or (2) unless it considers that the name is misleading to the public or otherwise undesirable.

(4) For the purposes of this section –

- (a) the whole of the name in question shall be taken into account in deciding whether it is misleading or undesirable, but
- (b) no objection may be made to so much of the name as the person in question is entitled to use by virtue of the

preceding provisions of this Law.

(5) Where as a result of a material change in circumstances since the time when notice was given to the Commission under subsection (1) or (2) or as a result of further information becoming available to the Commission since that time, it appears to the Commission that a name to which it might have objected under that subsection gives so misleading an indication of the nature of the activities of the person in question as to be likely to cause harm to the public, the Commission may, by notice in writing served upon that person, object to that name.

(6) The Commission may also exercise the powers conferred by subsection (5) in cases where the person in question failed to give notice to the Commission in accordance with subsection (1) or (2).

(7) A notice to be given to the Commission under this section shall be given in such manner and form as the Commission may specify and shall be accompanied by such information and documents as the Commission may require.

Appeals against objections to names.

40. (1) A person aggrieved by a notice served upon him by the Commission under section 39 objecting to a name may appeal to the Court against the notice.

[(2) The grounds of an appeal under this section are that –

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.]

(3) An appeal under this section shall be instituted –

- (a) within a period of 28 days immediately following the date of the notice,
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) If an appeal under this section is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, the Commission may apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may dismiss the appeal or make such other order as it considers just.

[(5) On an appeal under this section the Court may –

- (a) set aside the decision of the Commission to issue the notice and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.]

(6) A decision of the Court under this section shall be final as to a question of fact, but an appeal shall lie to the Court of Appeal on a question of law within such period and in such manner as may be prescribed by Order of the Royal Court.

NOTE

In section 40, subsection (2) and subsection (5) were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, respectively section 9(a) and section 9(b), with effect from 29th October, 2008.

Offences in relation to objections to names.

41. (1) Where the Commission gives notice objecting to a name under section 39, the person upon whom the notice was served shall not use or cause or permit to be used the name for the purposes of or in connection with any business carried on in the Bailiwick after the notice takes effect.

(2) A notice of objection –

- (a) under section 39(1) or (2), takes immediate effect,
- (b) under section 39(5), takes effect at the end of the period within which, under section 40, an appeal can be brought or, if an appeal is brought, when the appeal is determined or withdrawn.

(3) A person who contravenes any provision of this section is guilty of an offence.

Incorporation and change of name of companies.

42. Without prejudice to the provisions of any other enactment, no application made to the Court or the Court of Alderney under the provisions of the Companies (Guernsey) Laws or, as the case may be, the Companies (Alderney) Laws –

- (a) for permission for the registration of a company in the proposed name of which there appears the word bank, banker or banking or any cognate expression, whether in English or any other language,
- (b) for the approval of a change of name of a company registered in the Bailiwick by the inclusion (whether in English or any other language) of the word bank, banker or banking or any cognate expression,

shall be granted unless the applicant establishes that it is a licensed institution or that it has obtained the permission of the Commission in that behalf under section 38 and any conditions subject to which that permission was granted have, so far as practicable, been complied with; and no such application shall be granted where a notice of objection under section 39 is in force in respect of the proposed name.

PART III

DISCLOSURE OF INFORMATION

Restrictions on disclosure of information.

43. (1) Subject to the provisions of section 44 –

- (a) no person who under or for the purposes of this Law

receives information relating to the business or other affairs of any person,

- (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence.

Cases where disclosure is permitted.

44. Section 43 does not preclude –

- (a) the disclosure of information which at the time of disclosure is or has already been made available to the public from other sources or information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Commission, or any body established by Ordinance under section 46 for the purposes of a scheme for the protection of depositors, to discharge its functions conferred by or under this Law,
- (c) without prejudice to the generality of paragraph (b),

the disclosure of information by the Commission to the auditor of a licensed institution or former licensed institution if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions under this Law or would otherwise be in the interest of depositors,

- (d) where the Commission considers it necessary, in order to enable or assist it to discharge its functions under this Law, to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,
- (e) the disclosure by the Commission of information in the interests of depositors[, investors or other customers] or in the public interest,
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its [...] functions,
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any order, regulation or rule made under

it,

- [(h) the disclosure of information –
 - (i) for the purposes of the investigation, prevention or detection of crime, or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,whether under this Law or otherwise,]
- (i) the disclosure of information in connection with any other proceedings arising out of this Law,
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of a licensed institution or former licensed institution or by an accountant or other person nominated or approved for the purposes of section 5(5) or 25(1)(b) or appointed under section 27,
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under section 27, 28 or 29 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,

- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of a prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or body responsible for a scheme for compensating [depositors, investors or other customers] (whether in the Bailiwick or elsewhere) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge its functions and if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission, or
- (n) the disclosure of information by the Commission otherwise for the purposes or in the circumstances described in section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^f.

NOTES

In section 44,

the words in square brackets in paragraph (e) were inserted by the

^f Ordres en Conseil Vol. XXX, p. 243.

Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(19)(a), with effect from 11th August, 2003;

the word omitted in square brackets in paragraph (f) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(19)(b), with effect from 11th August, 2003;

paragraph (h), and the words in square brackets in paragraph (m), were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, respectively section 1(19)(c) and section 1(19)(d), with effect from 11th August, 2003.

Information supplied by relevant overseas authority.

45. (1) Section 43 applies also in relation to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority in a country outside the Bailiwick.

(2) Information described in subsection (1) may be disclosed only –

- (a) with the consent of the persons whose consent is referred to in section 43(1), or
- (b) for the purposes or in the circumstances described in section 44(a), (b) or (h)[, or
- (c) with the consent of the relevant supervisory authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of section 44.]

NOTE

In section 45, paragraph (c) of subsection (2), and the word immediately after paragraph (b) thereof, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(20), with effect from 11th August, 2003.

PART IV

COMPENSATION SCHEMES

Power to establish compensation schemes.

46. (1) The States may by Ordinance establish any scheme considered by them to be desirable or expedient for the protection and compensation of depositors or investors in cases where licensed institutions or former licensed institutions are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their deposit-taking business.

(2) Without prejudice to the generality of the foregoing, an Ordinance under subsection (1) may make provision in respect of all or any of the following matters –

- (a) the establishment of a fund for the protection and compensation of depositors and investors,
- (b) the holding, management and application of the said fund,
- (c) the making of contributions to the fund and the levying thereof from licensed institutions and former licensed institutions,
- (d) the costs, expenses and other items which are to be

chargeable to the fund,

- (e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made,
- (f) the description and amount of the deposits or other liabilities, and the description of creditors, to be protected,
- (g) the liability of licensed institutions and former licensed institutions in respect of compensation payments,
- (h) the payment or repayment of claims, contributions or other monies, or any description thereof,
- (i) the tax treatment of contributions and repayments thereof,
- (j) the crediting of monies and income to the fund,
- (k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,
- (l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body,

- (m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights.

NOTE

The following Ordinances have been made under section 46:

Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008;

Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2014.

PART V

OFFENCES AND PENALTIES

False or misleading information.

- 47.** (1) A person who –
- (a) in connection with an application for a banking licence under this Law,
 - (b) in purported compliance with a requirement imposed by or under this Law or any order, regulation or rule made under it, or
 - (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which the person providing the information or document intends, or could reasonably be expected to know, that the information or document

would or might be used by the Commission for the purpose of exercising its functions under this Law –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A licensed institution or former licensed institution which fails to provide the Commission with any information in its possession knowing or having reasonable cause to believe –

- (a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation to the institution, and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the institution,

is guilty of an offence.

Penalties.

48. (1) A person guilty of an offence under section 1(6), 16, 19(3), 19(12), 20(3), 21(1), 25(12), [26A(5)], 27(8), 28(3), 29(5), 30, 37(5), 41(3), 43(2) or 47(1) is liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

(2) A person or institution guilty of an offence –

- (a) under section 22(4), 23(3), 24(5), 31(4) or 32(4) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale,

(b) under section 9(5), 12(6) or 47(2) is liable on conviction to a fine.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(a) and (2)(a) shall be applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987^g and section 23 of the Reform (Sark) Law, 1951^h.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there shall be deemed to be a fresh offence on each day on which the display or exhibition continues.

NOTES

In section 48, the figures in square brackets in subsection (1) were substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 10, with effect from 29th October, 2008.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.

Criminal liability of directors, abettors, etc.

^g Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

^h Ordres en Conseil Vol. XV, p. 215; Vol. XXIII, p. 200; Vol. XXIX, p.27; No. VII of 1989; and No. XII of 1991.

49. (1) Where an offence under this Law is committed by an institution and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, controller, manager, secretary or other similar officer of the institution or any person purporting to act in any such capacity, he as well as the institution is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of an institution are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Without prejudice to the generality of subsection (1), a person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law may be proceeded against and punished as a principal offender.

Defence of due diligence.

50. In any proceedings for an offence under this Law it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

Summary jurisdiction.

51. Summary proceedings for an offence under this Law wherever committed may, without prejudice to any jurisdiction exercisable apart from this section, be taken before any court of summary jurisdiction in the Bailiwick.

PART VI
MISCELLANEOUS AND SUPPLEMENTARY

Verification of information.

52. The Commission may direct that any information, document or statement furnished to it in compliance or purported compliance with any requirement imposed by or under any provision of this Law or of any Ordinance, regulation or rule under it shall be verified in such manner as the Commission may specify; and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been furnished in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

Service of notices.

53. (1) Any document to be given or served under this Law may be given to or served upon –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) an institution with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) an institution without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no

such place, its registered or principal office outside the Bailiwick,

- (d) an unincorporated body, by being given to or served on any partner, member, manager, controller or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) [the Policy Council], by being left at, or sent by post or transmitted to, its principal office in the Bailiwick,
- (f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick,

and in this section the expression "**by post**" means by registered post or recorded delivery service and the expression "**transmitted**" means transmitted by telex, by facsimile transmission or by any similar means which produce a document containing the text of the communication.

(2) If a person notifies the Commission of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post to, or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be

effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on [the Policy Council] or the Commission or its Chairman under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian; and if there is no guardian, the Commission may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

NOTES

In section 53, the words "the Policy Council" in square brackets, wherever occurring, were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Evidence.

54. (1) In any proceedings, a certificate purporting to be signed on behalf of the Commission and certifying –

- (a) that a particular person is or is not a licensed institution or was or was not such an institution at a particular time,
- (b) that a particular person was or was not registered under the provisions of section 4 of the Ordinance of 1971 or was or was not so registered at a particular time,
- (c) the date on which a particular person obtained or ceased to hold a banking licence or was registered or ceased to be registered as mentioned in paragraph (b),
- (d) the terms of any conditions imposed in respect of a particular person's banking licence or subject to which a person was registered as mentioned in paragraph (b),

shall be admissible in evidence.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

Limitation of liability.

55. No liability shall be incurred by, or by any Committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or by the Commission, or by any member, officer or servant of any of the aforesaid, in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under this Law unless the thing was done or omitted to be done in bad faith.

Interpretation.

56. (1) In this Law, unless the context otherwise requires –

"associate", in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an institution, means –

- (a) the spouse, child or step-child of that person,
- (b) any body corporate of which that person is a director,
- (c) any person who is an employee or partner of that person,
- (d) if that person is a body corporate –
 - (i) any director or subsidiary of that body corporate, and

- (ii) any director or employee of any such subsidiary, and
- (e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in that institution or under which they undertake to act together in exercising their voting power in relation to it, that other person,

"auditor" means a person who is qualified for appointment as an auditor by virtue of section 19(1)(a) or (b) of the Companies (Guernsey) Law, 1990ⁱ and who is authorised by the Commission to audit the accounts of licensed institutions,

"Bailiff" –

- (a) in relation to the Bailiwick, means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,
- (b) in relation to Alderney, includes the Chairman of the Court of Alderney, and
- (c) in relation to Sark, includes the Seneschal,

"Bailiwick" means the Bailiwick of Guernsey,

ⁱ Order in Council No. XXVII of 1990.

["**bank**" means an institution which holds a banking licence,]

"banking licence" has the meaning given in section 1,

"capital base", in relation to a licensed institution and any relevant subsidiary thereof, means the capital base determined by the Commission under section 24 after consultation with the institution concerned and in accordance with principles published by the Commission,

"chief executive", in relation to an institution, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the institution and, in relation to an institution whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

"the Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^j,

"[the Policy Council]" means the States of Guernsey [Policy Council],

"the Companies (Alderney) Laws" means the Companies (Alderney) Laws, 1894 to 1962^k,

"the Companies (Guernsey) Laws" means the Companies

^j Ordres en Conseil Vol. XXX, p. 243.

^k Ordres en Conseil Vol. II, p.451; and Vol. XIX, p. 33.

(Guernsey) Laws, 1908 to 1990^I,

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

"controller", in relation to an institution, means –

- (a) a managing director or chief executive of that institution or of any other institution of which that institution is a subsidiary,
- (b) a shareholder controller or an indirect controller,

"country" includes a territory,

"the Court" means the Royal Court sitting as an Ordinary Court [and for the purposes of this Law –

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto],

"deposit" has the meaning given in section 2,

^I Ordres en Conseil Vol. IV, p. 178; Vol. X, p. 298; Vol. XVII, p. 444; Vol. XX, p.17; Vol. XXIV, p. 14; and No. XXVII of 1990.

"deposit-taking business" has the meaning given in section 3,

"director", in relation to an institution, includes any person who occupies the position of director, by whatever name called,

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"equity share capital" means, in relation to an institution, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

"former licensed institution" means an institution which –

- (a) does not hold and is not deemed to hold a banking licence,
- (b) has previously held such a licence or was registered under the provisions of section 4 of the Ordinance of 1971, and
- (c) continues to have a liability in respect of a deposit for which it had a liability at a time when it was so licensed or registered,

"group", in relation to an institution, means that institution, any other institution which is its holding company or subsidiary and any other

institution which is a subsidiary of that holding company,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"holding company" has the meaning given in Schedule 2, subject to any regulations under section 4,

"indirect controller", in relation to an institution, means a person in accordance with whose directions or instructions any director of that institution or of any other body corporate of which that institution is a subsidiary, or any controller of that institution, is accustomed to act,

"inspector" means a person appointed by the Commission under section 27(1),

"institution" means a body corporate incorporated with or without limited liability in any part of the world,

"licensed institution" means an institution which holds or which is deemed to hold a banking licence,

"manager", in relation to an institution, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the institution –

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the institution,

"officer of police" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney,
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey,
- [(d) any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,]

"the Ordinance of 1971" means the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971^m,

[...]

["regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,

^m Recueil d'Ordonnances Tome XVII, p. 225.

- (b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (c) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- [(da) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,
- (db) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,]
- (e) any other enactment or statutory instrument prescribed for the purposes of this section by regulation of the Commission,]

"related company" has the meaning given in section 25(6),

"relevant supervisory authority", in relation to a country outside the Bailiwick, means the authority discharging in that country functions corresponding to those of the Commission under this Law,

"shareholder controller", in relation to an institution, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power in general meeting of

that institution or of any other institution of which that institution is a subsidiary,

"significant shareholder" has the meaning given in section 23(2),

"subsidiary company" has the meaning given in Schedule 2, subject to any regulations under section 4; and **"subsidiary"** has the same meaning.

(2) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948ⁿ applies to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 56,

the definition of the expression "bank" in subsection (1) was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(21)(a), with effect from 11th August, 2003;

the words in square brackets in the definition of the expression "the Policy Council" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words in square brackets in the definition of the expression "the Court" in subsection (1) were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 11, with effect from 29th October, 2008;

paragraph (d) of the definition of the expression "officer of police"

ⁿ Ordres en Conseil Vol. XIII, p. 355.

in subsection (1) was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(21)(b), with effect from 11th August, 2003;

the words omitted in square brackets immediately after the definition of the expression "the Ordinance of 1971" in subsection (1) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(21)(c), with effect from 11th August, 2003;

the definition of the expression "regulatory Laws" in subsection (1) was inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(21)(d), with effect from 11th August, 2003;

paragraph (da) and paragraph (db) of the definition of the expression "regulatory Laws" in subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010, regulation 2(2), with effect from 3rd September, 2010.

The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The following Regulations have been made under section 56:

Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Companies (Alderney) Laws, 1894 to 1962 have since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

The Companies (Guernsey) Laws, 1908 to 1990 have since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008,

section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Repeals.

57. The following enactments are repealed –

- (a) Part I of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969^o,
- (b) the Ordinance of 1971^p,
- (c) the Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1985^q,
- (d) section 3(1)(a) of, and paragraphs 8, 10 and 11 of Schedule 2 to, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^r,
- (e) the Protection of Depositors (Bailiwick of Guernsey)

^o Ordres en Conseil Vol. XXII, p. 28.

^p Recueil d'Ordonnances Tome XVII, p. 225.

^q Recueil d'Ordonnances Tome XXIII, p. 291.

^r Ordres en Conseil Vol. XXX, p. 243.

(Amendment) Ordinance, 1988^s,

(f) the Protection of Depositors (Bailiwick of Guernsey)
(Amendment No. 2) Ordinance, 1988^t,

(g) the Protection of Depositors (Amendment) (Bailiwick
of Guernsey) Ordinance, 1990^u, and

(h) section 8 of the Administration of Justice (Bailiwick of
Guernsey) Law, 1991^v.

Savings.

58. (1) Notwithstanding the repeal of the Ordinance of 1971 by section 57(b), an institution which, immediately before the commencement of this Law, was registered under the provisions of section 4 of that Ordinance shall, on the commencement of this Law, be deemed to have been granted a banking licence under this Law, and the provisions of this Law shall apply in relation to it accordingly; and, without prejudice to the generality of the foregoing, any condition imposed by or under the Ordinance of 1971 in respect of that institution's registration or in respect of registered persons generally shall be deemed to be a condition imposed in respect of its banking licence under section 9 of this Law.

(2) Any dispensation given under the Ordinance of 1971 and in force immediately before the commencement of this Law shall be deemed to have been given under the corresponding provision of this Law and shall, except to the

^s Recueil d'Ordonnances Tome XXIV, p. 269.

^t Recueil d'Ordonnances Tome XXIV, p. 326.

^u No. XXII of 1990.

^v No. I of 1991.

extent that it is inconsistent with the provisions of this Law, continue in force until varied, rescinded or replaced under the provisions of this Law.

(3) Any reference, howsoever expressed, in any enactment, statutory instrument or rule of court to an enactment repealed and re-enacted (with or without modification) by any provision of this Law shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

Amendments.

59. (1) In section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^w, in the definition of "group", for the words "section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971" substitute "section 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, 1993".

(2) ...

(3) In Part III of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969, the words "bank", "banker" and "banking" wherever appearing are repealed.

(4) In section 2(1)(a) of the Bankers Books Evidence (Guernsey) Law, 1954^y after "any" insert "person holding or deemed to hold a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1993 or any other".

NOTE

In section 59, subsection (2) was repealed by the Insurance Business

^w Ordres en Conseil Vol. XXX, p. 281.

^y Ordres en Conseil Vol. XVI, p. 24; and Vol. XXVIII, p. 431.

(Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002.

General provisions as to regulations, etc.

- 60.** (1) Any Ordinance, regulation or rule [or code] under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, regulation or rule [or code], as the case may be, hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient,
 - (c) shall, in the case of a regulation [...], be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new regulation [...].
- (2) Any power conferred by this Law to make any Ordinance, regulation or rule [or code] may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to

which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

NOTES

In section 60,

the words "or code" in square brackets, wherever occurring, were inserted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(22), with effect from 11th August, 2003;

the words omitted in square brackets in paragraph (c) of subsection (1) were repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

Citation and commencement.

61. (1) This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

(2) This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different

provisions or different purposes.

NOTE

The Law was brought into force on 1st October, 1994 by the Banking Supervision (Commencement) Ordinance, 1994, section 1.

SCHEDULE 1
EXEMPTED PERSONS

1. The States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

2. The central bank of a member state of the Organisation for Economic Co-operation and Development.

3. The National Savings Bank of the United Kingdom within the meaning of the Post Office Act 1969^z.

4. (1) A friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974^{aa} or section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970^{bb}.

(2) This paragraph applies only to the acceptance of deposits in the course of carrying out transactions permitted by the rules of the society concerned.

5. (1) An insurer registered under section 11 of the Insurance Business (Guernsey) Law, 1986 to carry on insurance business of a class specified in that Law.

(2) A person exempt from such registration under section 8 of the

^z An Act of Parliament (1969 c. 48).

^{aa} An Act of Parliament (1974 c. 46).

^{bb} An Act of Parliament (1970 c. 31).

said Law.

(3) This paragraph applies only to the acceptance of deposits in the course of lawfully carrying on –

- (a) in the case of a person described in subparagraph (1),
the authorised insurance business,
- (b) in the case of a person described in subparagraph (2),
insurance business,

in accordance with the said Law.

[6. ...]

NOTES

In Schedule 1, paragraph 6 (which was originally inserted by the Banking Supervision (Bailiwick of Guernsey) Regulations, 1994, regulation 4, with effect from 1st October, 1994) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2000, regulation 1, with effect from 31st March, 2000.

The Insurance Business (Guernsey) Law, 1986 has since been repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002, subject to the savings in, first, section 102 of the 2002 Law and, second, section 78 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

SCHEDULE 2

MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law an institution is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

- (a) that other –
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first-mentioned institution is a subsidiary of any institution which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of an institution's board of directors shall be deemed to be controlled by another institution if, but only if, that other institution has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other institution shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other institution of such a power,
- (b) that a person's appointment thereto follows necessarily

from his appointment as director of that other institution,

- (c) that the directorship is held by that other institution itself or by a subsidiary of it.

3. In determining whether an institution is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it:
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable –
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned institution or of a trust deed for securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law an institution shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

[SCHEDULE 3
MINIMUM CRITERIA FOR LICENSING

Integrity and skill.

1. 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 prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of its activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

Relevant documents when conducting business.

1A. In conducting its business, the institution shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles and instructions issued from time to time under this Law and under any other enactment as may be applicable to the institution.

Economic benefit.

2. ...

Directors, etc. to be fit and proper persons.

3. (1) Every person who is, or is to be, a director, controller[,

significant shareholder] or manager of the institution is a fit and proper person to hold that position.

(2) In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to –

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position,
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of clients and customers and his record of compliance with any provision contained in or made under –
 - (i) the Criminal Justice (Fraud Investigation)

- (Bailiwick of Guernsey) Law, 1991,
- (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007,
 - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, or
 - (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced under paragraph 1A.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has –

(a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,

(b) contravened any provision contained in or made under –

(i) this Law,

(ii) the Ordinance of 1971,

(iii) the regulatory Laws,

(iv) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, rules, instructions and guidance issued by the Commission in relation thereto),
or

(v) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –

(A) dishonesty, incompetence or

malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services, or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre"),

(c) engaged in any: business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on deposit-taking business, or

(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

(4) For the purposes of subparagraph (3) and for the avoidance of doubt,

- (a) **"conduct and activities"** includes any conduct, activity or omission in any jurisdiction,
- (b) **"offence"** includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and
- (c) **"enactment"** includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Business to be directed by at least two individuals.

4. (1) At least two individuals who are –

- (a) resident in the Bailiwick,
- (b) of appropriate standing and experience, and
- (c) sufficiently independent of each other,

shall effectively direct the business of the institution.

(2) For the purposes of subparagraph (1)(c), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

Composition of board of directors.

5. In the case of an institution incorporated in the Bailiwick, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate, having regard to the circumstances of the institution and the nature and scale of its operations.

Business to be conducted in prudent manner.

6. (1) The institution conducts or, in the case of an institution which is not yet carrying on deposit-taking business, will conduct its business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), an institution shall not be regarded as conducting its business in a prudent manner unless –

- (a) it maintains or, as the case may be, will maintain –

- (i) a capital base, and

- (ii) insurance cover,

of an amount which the Commission considers appropriate,

- (b) it maintains or, as the case may be, will maintain adequate liquidity, having regard to –
 - (i) the relationship between its liquid assets and its actual and contingent liabilities,
 - (ii) the times at which those liabilities will or may fall due and its assets will mature,
 - (iii) the nature and scale of the institution's operations,
 - (iv) the risks inherent in those operations, and in the operations of any other institution in the same group so far as capable of affecting the institution, and
 - (v) any other factors appearing to the Commission to be relevant,
- (c) it makes or, as the case may be, will make adequate provision for –
 - (i) depreciation or diminution in the value of its assets (including provision for bad or doubtful debts),
 - (ii) liabilities which will or may fall to be discharged by it, and

- (iii) losses which it will or may incur, and
- (d) it maintains or, as the case may be, will maintain –
 - (i) adequate accounting and other records of its business, and
 - (ii) adequate systems of control of its business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), in determining whether an institution is to be regarded as conducting its business in a prudent manner, the Commission shall also have regard to the following –

- (a) whether the institution has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,
- (b) the systems of control and record keeping of the institution for business undertaken or contemplated and the provision made by it for the proper maintenance and development of such systems,
- (c) the complaints history of the institution, and
- (d) whether the structure or organisation of the group of which the institution is a part, hinders effective supervision.

- (4) For the purposes of –
 - (a) subparagraph 2(a), an appropriate amount is –
 - (i) an amount commensurate with the nature and scale of the institution's operations, and
 - (ii) an amount and nature sufficient to safeguard the interests of the institution's depositors and potential depositors, having regard to –
 - (A) the nature and scale of the institution's operations,
 - (B) the risks inherent in those operations, and in the operations of any other institution in the same group so far as capable of affecting the institution, and
 - (C) any other factors appearing to the Commission to be relevant,
 - (b) subparagraph 2(b), in considering the liquid assets of an institution, the Commission may, to such extent as it thinks appropriate, take into account –
 - (i) the assets of the institution, and
 - (ii) the facilities which are available to it, which

are capable of providing liquidity within a reasonable period, and

(c) subparagraph 2(d) –

(i) records and systems shall not be regarded as adequate unless they are such as to enable –

(A) the business of the institution to be managed prudently, and

(B) the institution to comply with the duties imposed on it by or under this Law or any enactment listed in paragraph 3(2)(f), and

(ii) in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the institution's directors.

Information required by the Commission.

6A. An institution and any person who is, or is to be, a director, controller[,significant shareholder], partner or manager of the institution, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

[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.]

Power to make regulations.

7. [The Policy Council] may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark, make regulations amending the provisions of this Schedule.]

NOTES

Schedule 3 was substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 1, with effect from 23rd January, 2008.⁹

In Schedule 3,

paragraph 2 was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008, with effect from 23rd January, 2008;

first, paragraph 6B and paragraph 6C and, second, the words in square brackets in paragraph 3(1) and paragraph 6A were inserted by the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010, respectively regulation 5 and regulation 4, with effect from 30th April, 2010;

the words "The Policy Council" in square brackets in paragraph 7 were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words "Policy and Performance Committee" in square brackets in paragraph 7 were substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

The following Regulations have been made under Schedule 3:

Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008;

Banking Supervision (Bailiwick of Guernsey) Regulations, 2010.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

¹ Previously, in accordance with the Resolution of the Chief Pleas of Sark of

20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.

² Subsection (13) was previously substituted by, first, the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 4, with effect from 29th October, 2008 and, second, the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 2, with effect from 25th February, 2009.

³ Prior to its substitution, section 26 was amended by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(15), with effect from 17th July, 2003.

⁴ Subsection (6) was previously substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 3, with effect from 25th February, 2009.

⁵ Subsection (7) was previously substituted by, first, the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 6(b), with effect from 29th October, 2008 and, second, the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 4, with effect from 25th February, 2009.

⁶ Subsection (4) was previously substituted by, first, the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 7(b), with effect from 29th October, 2008 and, second, the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 5, with effect from 25th February, 2009.

⁷ Subsection (6) was previously substituted by, first, the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 8(b), with effect from 29th October, 2008 and, second, the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 6, with effect from 25th February, 2009.

⁸ Previously, in accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.

⁹ Prior to its substitution, Schedule 3 was amended by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(23), with effect from 17th July, 2003.