

Consultation Paper on the Annual Compliance Return Rules proposed to be issued under the Banking Supervision (Bailiwick of Guernsey) Law, 2020

Closed 15 Sep 2021

Opened 3 Sep 2021

Contact

Lucille Wilson
(Administrator)
01481 712706
lwilson@gfsc.gg

Results updated 6 Oct 2021

We asked

We asked for feedback on the Banking Supervision (Annual Compliance Return) Rules and Guidance, 2021 (the “Rules”) which the Commission proposes to issue under the new Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the “New Banking Law”) as part of the wider “Revision of Laws” project.

In issuing the Rules it was not the Commission’s intent to introduce any significant policy changes, but rather, to limit the changes to those required to retain consistency with the New Banking Law and the amended Rules and Regulations to be made under it.

You said

A total of 6 parties responded using the Commission’s On-line Consultation Hub.

All respondents noted that the draft Rules added a new element to the annual review which appeared to be a policy change and therefore against our intent.

One respondent asked if there was going to be a transition period.

One respondent recommended a small number of grammatical and punctuation improvements, for which we are grateful.

Other than the three issues noted above, we did not receive any further comments or objections to the proposed Rules.

We did

It was pointed out by a number of respondents that Rule 2.2.8 introduced a new element to the Annual Review that did not feature in section 36C of the previous Banking Law or the Annual Compliance Form Guidance.

Rule 2.2.8 corresponds to subsection 40(2)(h) of the New Banking Law. As noted above, the Rules were not intended to introduce significant policy changes and on reflection we do not consider Rule 2.2.8 needs to be there as it would, in effect, constitute a policy change. As such Rule 2.2.8 has been removed from the final Rules.

The Commission is not proposing any formal transitional arrangements. We understand that this may lead to some overlap in the submitted returns as licensees align with the new reporting periods but we do not think that this will cause any significant issues. Licensees can provide additional comment within the return if this does cause any anomalies.

We would like to thank everyone who responded to the Consultation Paper for the valuable feedback they have provided, particularly given the short consultation period.

Next Steps

The Commission has published the draft amended Rules and these can be found [here](#). The Rules will come into force on 1 November 2021.

Overview

Purpose of the Consultation Paper

Revision of Laws Project

In August and September 2020, the States of Guernsey, the States of Alderney, and the Chief Pleas of Sark, as part of a review of the legislation governing the finance industry, approved the following –

- The Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the “New Banking Law”);

The New Banking Law forms part of the suite of legislation contemplated in the Policy Letter on the Revision of the Financial Supervisory and Regulatory Laws which was debated and approved by the States of Deliberation on the 30th of October 2015.

As part of the Revision of Laws project, the Commission undertook extensive public consultation and engagement on revising the Bailiwick’s supervisory and regulatory laws to maintain the Bailiwick’s reputation as an efficient and well-regulated international finance centre.

The New Banking Law updates the provisions of the previous law and

- brings it in line with current appropriate international standards;
- improves consistency between the regulatory laws;
- consolidates all enforcement powers, previously found across the laws, into the newly enacted Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

On 21 April 2021, the Commission issued consultation papers on proposals to issue and re-issue Statutory Instruments under the new and amended laws.

Under these proposals, the substance and meaning of the Statutory Instruments, and the way in which they operate, is intended to remain the same but the language used would be updated, making it consistent with the new and amended laws and there would be harmonisation of the layout and numbering across the rules and correction of minor drafting errors. The consultations on Statutory Instruments closed on 17 June 2021.

On 10 June 2021 the Commission issued a further consultation paper covering the various Codes and Guidance Documents currently in issue. As with the earlier consultations on the Statutory Instruments, the Commission intends to keep the substance and meaning of the Codes and Guidance Documents the same while updating the language so that it is consistent with the New and Amended Laws. The consultation on Codes and Guidance Documents closed on 26 July 2021.

Re-issue of Guidance on the Annual Compliance Form for Banks as Rules

Due to changes in the structure of the New Banking Law, it is necessary to re-issue some of the requirements previously contained in the Law, along with the existing Guidance on the Annual Compliance Form for Banks, as a set of Rules in order to ensure that the regulatory framework continues to function correctly upon implementation of the New Banking Law. As these are new rules, albeit transposing the requirements in the current Law, they were not included in the previous consultations, which were for rules with no substantial changes.

Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to maintain confidence in the Bailiwick's regulatory framework.

Purpose

The purpose of this Consultation Paper is to seek feedback from all firms licensed under the Banking Law on the changes to be made in order to

successfully implement the New Banking Law. The objective is to ensure that the regime continues to be both compliant with international standards and appropriate for the Guernsey market.

In preparing these new draft Rules and Guidance we have sought to minimise changes to reduce the administrative burdens on licensed entities who will use them.

The draft Annual Compliance Return Rules can be viewed through the hyperlinks in this paper.

This Consultation Paper does not prejudice any final decision to be made by the Commission.

Background to the proposals

Reason for re-issuing the Guidance on the Annual Compliance Form for Banks as Rules

Licensed banks are required to submit an Annual Compliance Form. This form includes, amongst other things, confirmation that the licensee has carried out an annual review. This annual review is a requirement under section 36C of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (the "1994 Banking Law"). The New Banking Law also requires an annual review under section 40.

However, where the 1994 Banking Law specifies the areas that must be covered by the annual review, the New Banking Law gives the Commission the power to issue rules specifying the areas that must be covered. For this reason, it is necessary to issue the Annual Compliance Return Rules. These proposed rules cover both the annual review and the other elements included in the Annual Compliance Form.

The requirements of the Annual Compliance Form and its associated guidance are not changing substantially. The substance and purpose of the Annual Compliance Return Rules are intended to remain the same as the current

requirements under the 1994 Banking Law and guidance. It has, however, provided an opportunity to update the language used, making it consistent with the New Banking Law, correct minor drafting errors and check that any internal and external references remain relevant when the New Banking Law come into force.

Overall policy approach

The draft Annual Compliance Return Rules do not set out to implement policy changes. Save for new terminology the proposed Annual Compliance Return Rules will be familiar to licensees and should be consistent with their current practices.

The Consultation Paper, along with the draft Annual Compliance Return Rules can be found below.

What happens next

The closing date for the Consultation Paper is 15th September 2021. Responses to this Consultation Paper will be considered by the Commission with a view to issuing the Annual Compliance Return Rules, in final form, during 2021. At that time, the current Annual Compliance Form Guidance will be withdrawn.

Related

 [Banking Supervision \(Annual Compliance Return\) Rules, 2021](#)

576.4 KB (PDF document)

 [Consultation Paper on the Annual Compliance Return Rules](#)

177.9 KB (PDF document)

Audiences

Banks

Guernsey Financial Services Commission

Consultation Paper on the Annual Compliance Return Rules proposed to be issued under The Banking Supervision (Bailiwick of Guernsey) Law, 2020.

2nd September 2021

Contents

PART 1	INTRODUCTION.....	4
	Purpose of the Consultation Paper.....	4
	Background to the proposals.....	6
	Overall policy approach	6
	Next Steps	6
PART 2	DRAFT ANNUAL COMPLIANCE RETURN RULES.....	7

Responses to this Consultation Paper are sought by 15th September 2021.

We welcome feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

PART 1 INTRODUCTION

Purpose of the Consultation Paper

Revision of Laws Project

In August and September 2020, the States of Guernsey, the States of Alderney, and the Chief Pleas of Sark, as part of a review of the legislation governing the finance industry, approved the following –

- The Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the “New Banking Law”);

The New Banking Law forms part of the suite of legislation contemplated in the Policy Letter on the Revision of the Financial Supervisory and Regulatory Laws which was debated and approved by the States of Deliberation on the 30th of October 2015.

As part of the Revision of Laws project, the Commission undertook extensive public consultation and engagement on revising the Bailiwick’s supervisory and regulatory laws to maintain the Bailiwick’s reputation as an efficient and well-regulated international finance centre.

The New Banking Law updates the provisions of the previous law and

- brings it in line with current appropriate international standards;
- improves consistency between the regulatory laws;
- consolidates all enforcement powers, previously found across the laws, into the newly enacted Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

On 21 April 2021, the Commission issued consultation papers on proposals to issue and re-issue Statutory Instruments under the new and amended laws. Under these proposals, the substance and meaning of the Statutory Instruments, and the way in which they operate, is intended to remain the same but the language used would be updated, making it consistent with the new and amended laws and there would be harmonisation of the layout and numbering across the rules and correction of minor drafting errors. The consultations on Statutory Instruments closed on 17 June 2021.

On 10 June 2021 the Commission issued a further consultation paper covering the various Codes and Guidance Documents currently in issue. As with the earlier consultations on the Statutory Instruments, the Commission intends to keep the substance and meaning of the Codes and Guidance Documents the same while updating the language so that it is consistent with the New and Amended Laws. The consultation on Codes and Guidance Documents closed on 26 July 2021.

Re-issue of Guidance on the Annual Compliance Form for Banks as Rules

Due to changes in the structure of the New Banking Law, it is necessary to re-issue some of the requirements previously contained in the Law, along with the existing Guidance on the Annual Compliance Form for Banks, as a set of Rules in order to ensure that the regulatory framework continues to function correctly upon implementation of the New Banking Law. As these are new rules, albeit transposing the requirements in the current Law, they were not included in the previous consultations, which were for rules with no substantial changes.

Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to maintain confidence in the Bailiwick's regulatory framework.

Purpose

The purpose of this Consultation Paper is to seek feedback from all firms licensed under the Banking Law on the changes to be made in order to successfully implement the New Banking Law. The objective is to ensure that the regime continues to be both compliant with international standards and appropriate for the Guernsey market.

In preparing these new draft Rules and Guidance we have sought to minimise changes to reduce the administrative burdens on licensed entities who will use them.

The draft Annual Compliance Return Rules can be viewed through the hyperlinks in this paper.

This Consultation Paper does not prejudice any final decision to be made by the Commission.

Background to the proposals

Reason for re-issuing the Guidance on the Annual Compliance Form for Banks as Rules

Licensed banks are required to submit an Annual Compliance Form. This form includes, amongst other things, confirmation that the licensee has carried out an annual review. This annual review is a requirement under section 36C of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (the "1994 Banking Law"). The New Banking Law also requires an annual review under section 40.

However, where the 1994 Banking Law specifies the areas that must be covered by the annual review, the New Banking Law gives the Commission the power to issue rules specifying the areas that must be covered. For this reason, it is necessary to issue the Annual Compliance Return Rules. These proposed rules cover both the annual review and the other elements included in the Annual Compliance Form.

The requirements of the Annual Compliance Form and its associated guidance are not changing substantially. The substance and purpose of the Annual Compliance Return Rules are intended to remain the same as the current requirements under the 1994 Banking Law and guidance. It has, however, provided an opportunity to update the language used, making it consistent with the New Banking Law, correct minor drafting errors and check that any internal and external references remain relevant when the New Banking Law come into force.

Overall policy approach

The draft Annual Compliance Return Rules do not set out to implement policy changes. Save for new terminology the proposed Annual Compliance Return Rules will be familiar to licensees and should be consistent with their current practices.

Part 2 sets out the draft Annual Compliance Return Rules along with a more detailed explanation where any noteworthy amendments have had to be made, e.g. the replacement of out-dated references.

Next Steps

The closing date for the Consultation Paper is 15th September 2021. Responses to this Consultation Paper will be considered by the Commission with a view to issuing the Annual Compliance Return Rules, in final form, during 2021. At that time, the current Annual Compliance Form Guidance will be withdrawn.

PART 2 DRAFT ANNUAL COMPLIANCE RETURN RULES

It is proposed that the Annual Compliance Return Rules replace the Guidance on the Annual Compliance Form for Banks

A copy of the current guidance document can be found by following this link:

[Guidance on the Annual Compliance Form for Banks](#)

A copy of the proposed draft rules can be found by following this link:

[Annual Compliance Return Rules](#)

Noteworthy amendments

- References have been amended to the equivalent provisions of the the New Banking Law.
- In the guidance under Part 4 Statement of Compliance with Liquidity Stress Testing (Statement C) an out of date reference to the “Enhanced Liquidity Approach” has been removed.
- In the guidance under Part 5 Internal Capital Adequacy Assessment Process (Statement D) the section regarding the frequency of the Supervisory Review and Evaluation Process has been updated to reflect current practice.
- The submission deadline of the Annual Compliance Form has been amended to match that of licensees’ audited accounts.

Do you have any comments on the proposed Annual Compliance Return Rules?

THE BANKING SUPERVISION (ANNUAL COMPLIANCE RETURN) RULES and GUIDANCE, 2021

The Annual Compliance Return Rules, made in accordance with the Banking Supervision (Bailiwick of Guernsey) Law, 2020 (“the Law”), are set out in this document. Guidance, provided by the Guernsey Financial Services Commission (“the Commission”), can be found in blue boxes.

Contents

PART 1	INTRODUCTION.....	4
1.1	Application	4
PART 2	SCOPE OF THE ANNUAL REVIEW	5
2.1	Application and scope.....	5
2.2	Areas to be included in the Annual Review	6
2.2.1	Individual loans, asset classification, and loss provisioning which includes consideration of the on and off balance sheet exposures.	6
2.2.2	Control systems.....	6
2.2.3	Financial record keeping systems and data systems	7
2.2.4	Business activity undertaken without director knowledge	8
2.2.5	Responsibilities and conduct of the Board,	9
2.2.6	Risk management.....	10
2.2.7	The control environment	11
2.2.8	Compliance.....	12
2.3	Timing and frequency	13
2.4	Exceptions	13
PART 3	STATEMENT ON COMPLIANCE WITH LICENCE CONDITIONS.....	14
3.1	Application.....	14
3.2	Compliance with standard conditions	14
3.3	Compliance with additional conditions	15
3.4	Timing and frequency	15
PART 4	STATEMENT ON COMPLIANCE WITH LIQUIDITY STRESS TESTING.....	17
4.1	Application	17
4.2	Compliance with the requirement to undertake liquidity stress testing.....	17
4.3	Exceptions	17
4.4	Timing and frequency	18
PART 5	INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS (ICAAP).....	19
5.1	Application	19
5.2	Compliance with the requirement to review capital adequacy	19
5.3	Exceptions	20
5.4	Timing and frequency	20
PART 6	NOTIFICATIONS TO THE COMMISSION	21
6.1	Application	21
6.2	Return of the Annual Compliance Form	21

6.3	Requirement for immediate notification.....	22
PART 7	GENERAL PROVISION.....	23
7.1	Interpretation.....	23
PART 8	CITATION AND COMMENCEMENT	23
8.1	Citation and commencement	23

DRAFT

PART 1 INTRODUCTION

1.1 Application

- (1) The Banking Supervision (Annual Compliance Return) Rules, 2021 complement, and should be read in conjunction with, section 40 of the Law.
- (2) These Rules apply to all licensees unless specifically stated otherwise in the applicable rule.
- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

PART 2 SCOPE OF THE ANNUAL REVIEW

2.1 Application and scope

- (1) This Part applies to all banking licensees.
- (2) The Annual Review must include –
 - (a) the business carried on by the licensee; and
 - (b) the business carried on by any undertaking established by them.

Guidance Note

Part 2 applies to all banks – branches and subsidiaries.

Effective management of a business demands the existence of a framework where governance is monitored. The governance framework for a branch will be different to that of a subsidiary but, nevertheless, this Part applies. It is the responsibility of the branch senior management to ensure that the branch complies with the Annual Review requirements of the Law.

The branch corporate governance model should address issues at a local level, preferably through a branch management committee or similar governing body, and ensure that issues are reported upwards to the appropriate executive level within the parent bank.

Where a branch outsources a function to elsewhere in the Group or to a third party, the branch should review how it maintains oversight of the quality of that function, such that it can be satisfied that the function being carried out on its behalf meets Guernsey legal and regulatory requirements.

For each sub-category in section 40(2) of the Law, branch senior management should consider the governance in place at local level and, where applicable, how that particular area is reported upwards, such that it can be assured that, ultimately, the bank's parent board will have enough information to assess and control the risks of its branch within this jurisdiction.

2.2 Areas to be included in the Annual Review

- (1) A licensee must ensure that the following matters are reviewed as part of the Annual Review process.

2.2.1 Individual loans, asset classification, and loss provisioning which includes consideration of the on and off balance sheet exposures.

- (1) The Annual Review must provide assurance that –
 - (a) the bank has appropriate credit risk assessment processes and effective internal controls commensurate with the size and risk profile of its business;
 - (b) loans and assets are reliably classified on the basis of credit risk; and
 - (c) the bank's aggregate amount of individual and collectively assessed loss provisioning should be adequate to absorb estimated credit losses.

Guidance Note

The Annual Review should consider the adequacy of the policies and procedures for reviewing loans, asset classifications and provisioning, including both on and off balance sheet exposures.

2.2.2 Control systems

- (1) A review of the effectiveness of the control systems in place must be undertaken and must include-
 - (a) confirmation that pre-submission controls are in place to ensure the timely and accurate preparation and submission of all returns, required under the Law, to the Commission; and

- (b) ensure any inaccuracies in any information presented to the Commission under subsection (a) are identified, corrected, and reported to the Commission without further delay.
- (2) Where the required submissions have not occurred, or have been returned late, measures must be put in place to ensure that the oversight is not repeated.

Guidance Note

This relates to submission of monthly and quarterly returns, annual financial statements, notifications of changes in directors, managers, and controllers and large exposure notifications.

The Review should examine how returns and notifications are reviewed prior to submission to the Commission, to ensure that they are accurate. Changes in procedure that have been implemented to address any inaccuracies previously highlighted in returns or notifications should be reviewed, if applicable. The Annual Review could include reference to internal and external audit observations and recommendations if such a review has taken place during the period covered by the Annual Review.

2.2.3 Financial record keeping systems and data systems

- (1) A review of the reliability of all financial record keeping systems and all data systems must be undertaken, including, but not limited to –
 - (a) any reports of errors and omissions;
 - (b) operational risk events;
 - (c) system breakdowns;
 - (d) records of write-offs;
 - (e) sundry losses;

- (f) complaints monitoring undertaken by compliance teams; and
 - (g) internal or external auditor reports submitted to the board for review.
- (2) Where errors have occurred, a review of the measures that have been put in place to prevent reoccurrence must be included.
- (3) Where a licensee outsources record keeping or the management and operation of data systems, including transaction monitoring and sanctions screening, to its group or a third party, the review must assess the arrangements in place to ensure the effectiveness of the service being performed and its compliance with local legal and regulatory requirements.

Guidance Note

The Annual Review could include reference to relevant internal and external audit observations and recommendations if such a review has taken place during the period covered by the Annual Review.

2.2.4 Business activity undertaken without director knowledge

- (1) The review must be satisfied that the business is undertaking activities consistent with –
- (a) Board expectations; and
 - (b) the scope of knowledge and experience of the directors.
- (2) Where the licensee is a branch the review must –
- (a) consider how local management maintain oversight of the various aspects of the business; and
 - (b) provide a description of how these activities are reported to the parent bank.

- (3) Where a director of a parent board has direct responsibility for any aspect of the branch, the individual and their areas of responsibility must be identified.

Guidance Note

Assurance that business is being undertaken, in accordance with the above, might be through obtaining reviews undertaken at board meetings of business strategy, risk and compliance reports, product development and sales performance.

Examples of how activities are reported to the parent bank include reporting to an individual director on the parent bank board, or to a committee or other meeting of the parent bank.

2.2.5 Responsibilities and conduct of the Board,

- (1) The responsibilities and conduct of the Board must be reviewed in line with The Finance Sector Code of Corporate Governance (“the Code”)¹.
- (2) The Annual Review must provide assurance that an effective corporate governance process is in place which is appropriate to the nature, scale, and complexity of the licensee’s business.
- (3) The Commission must be informed when a licensee is subject to compliance with, or is required to report against, a non-Commission, equivalent code and a comparison must be carried out between local governance measures and the first seven principles of the Code².

Guidance Note

The Finance Sector Code of Corporate Governance, comprising of eight principles and underlying guidance, sets a framework of good corporate governance against which licensees’ governance standards can be measured.

¹ The Finance Sector Code of Corporate Governance is available on the Commission’s website, <https://www.gfsc.gg>.

² Principle 8 in shareholder relations is not relevant for the purposes of this review.

In performing the review, the self-assessment of compliance with the Code (or non-Commission equivalent code where relevant) should be considered. The extent of the self-assessment should reflect the nature, scale, and complexity of the bank.

Although the Code does not apply to branches the Commission will be expecting branch management to compare their local governance framework and their engagement with the parent bank's board to the Code's principles. Branches should consider how the principles are met by reference to both the local governance at branch level and the oversight from the parent board.

2.2.6 Risk management

- (1) The Annual Review must consider whether the Board has ensured that a risk management process is in place which is commensurate with the risk profile of the licensee and that –
 - (a) a sound risk management culture is established;
 - (b) risk-taking policies and processes are developed which are consistent with the risk management strategy and the established risk appetite;
 - (c) uncertainties attached to risk measurement are recognised;
 - (d) appropriate limits are established that are consistent with the risk appetite, risk profile, and capital strength and that they are understood by, and regularly communicated to, relevant staff; and
 - (e) senior management monitor and control all material risks consistent with the approved strategies and risk appetite.
- (2) Where the licensee is a branch, the review must consider how the risks, to which the Guernsey branch is exposed, are considered and reviewed at local management level and how these are reported to the appropriate executive level within the parent bank.

- (3) All licensees must identify the individuals, employed within the Bailiwick, who are responsible for risk management³.

Guidance Note

In the case of branches the Annual Review should consider whether risk appetite and the risk management policy are imposed by the parent, or whether the branch has a significant input into these policy areas in order to tailor them to the environment in which the branch operates.

2.2.7 The control environment

- (1) The Annual Review must assess whether the licensee has an internal control framework that is adequate to establish a properly controlled operating environment for the conduct of its business, including –
- (a) organisational structure including, but not limited to –
 - (i) definitions of duties and responsibilities, including clear delegation of authority;
 - (ii) decision-making policies and processes; and
 - (iii) separation of critical functions;
 - (b) accounting policies and processes including, but not limited to –
 - (i) reconciliation of accounts;
 - (ii) control lists; and
 - (iii) information for management;

³ In accordance with section 9 of Schedule 2 of the Law.

- (c) checks and balances, including, but not limited to –
 - (i) segregation of duties;
 - (ii) cross-checking;
 - (iii) dual control of assets; and
 - (iv) double signatures; and
- (d) safeguarding assets and investments including, but not limited to -
 - (i) physical control; and
 - (ii) computer access

and taking into account the licensee's risk profile.

- (2) The Annual Review must also assess whether there is a robust and independent internal audit function.

2.2.8 Compliance

- (1) The Annual Review must consider compliance by the licensee, holders of supervised roles, officers, and employees with –
 - (a) the provisions of the Law;
 - (b) the provisions of all other legislation applicable to the licensee;
 - (c) the provision of any applicable rules; and
 - (d) the minimum criteria for licensing.

2.3 Timing and frequency

- (1) The Annual Review must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) must cover the same period as the licensee's financial year.

2.4 Exceptions

- (1) Where the Annual Review reveals errors or shortcomings in compliance, with any of the areas set out in Rule 2.2, these must be identified in the "Exceptions" section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

Guidance Note

Licensees should provide a short summary of the problem identified, its cause, its duration and the steps taken, by the bank, to remedy the situation.

A shortcoming could be, for example, a late return to the Commission or a failure to obtain the Commission's approval before effecting the appointment of a director or a manager.

Other examples could include the launch of a product of which the Board was unaware, or significant internal audit findings in relation to systems and controls.

If no errors or shortcomings have been identified, there is no need to populate the "Exceptions" part of the form.

PART 3 STATEMENT ON COMPLIANCE WITH LICENCE CONDITIONS

3.1 Application

- (1) This Part applies to all banking licensees.

3.2 Compliance with standard conditions

- (1) The licensee must complete Statement B of the Annual Compliance Form with reference to its compliance with the standard conditions imposed on its banking licence.
- (2) Where the licensee believes that it has not been in full compliance then the “Exceptions” section must be completed including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

3.3 Compliance with additional conditions

- (1) The licensee must complete Statement B with reference to its compliance with any additional conditions imposed, by the Commission, on its banking licence.
- (2) Where the licensee believes that it has not been in full compliance then the “Exceptions” section must be completed including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

3.4 Timing and frequency

- (1) Statement B must be –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee’s financial year.

Guidance Note

As part of the licensing process, the Commission will normally impose a standard set of conditions on all banks at the point that the licence is issued. The Commission, in exercise of its powers under section 8 of the Law, has imposed standard conditions (i) to (iv) below on the licence of all Guernsey banks and standard condition (v) on the licence of Bailiwick incorporated banks only.

(i) *There shall be no significant change in the nature of the business conducted without prior consultation with the Commission.*

(ii) Completed prudential returns are provided to the Commission and any other such similar returns that may from time to time be required. The Commission will on occasion require an institution to provide confirmation from an external auditor that prudential returns accurately reflect the business on the reporting date.

(iii) You should not establish a branch/sub-branch outside the Bailiwick or invest in any company, which after such investment would be a subsidiary, associate or joint venture without the prior consent in writing of the Commission.

(iv) You should notify the Commission as soon as you become aware of any material adverse development surrounding the bank's operations including but not limited to:

- breaches of legal obligations;*
- breaches of prudential supervisory requirements;*
- the discovery of fraud or losses from unauthorised trading;*
- decisions to write off bad debts or to make new specific loan provisions;*
- involvement by the bank or its senior staff in litigation; or*
- a significant deterioration in profitability.*

(v) No repayments of capital or payment of dividends may be made without the prior written consent of the Commission.

Occasionally, it may be necessary to impose additional conditions on individual banks, according to the circumstances specific to that bank.

PART 4 STATEMENT ON COMPLIANCE WITH LIQUIDITY STRESS TESTING

4.1 Application

- (1) This Part only applies to licensees who are banks incorporated in the Bailiwick.

4.2 Compliance with the requirement to undertake liquidity stress testing

- (1) Licensees, incorporated in the Bailiwick, must undertake liquidity stress testing on a frequency appropriate to the scale and nature of the risk and, at a minimum, once per financial year.
- (2) Licensees must complete Statement C, of the Annual Compliance Form, confirming that –
 - (a) it has stress tested its liquidity; and
 - (b) the results, vulnerabilities, and resulting actions have been considered by the Board.

4.3 Exceptions

- (1) Where Statement C reveals errors or shortcomings in compliance these must be identified in the “Exceptions” section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;

- (c) the duration of the non-compliance; and
- (d) the steps taken to remedy the position.

4.4 Timing and frequency

- (1) Statement C must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee's financial year.

Guidance Note

The Commission's Guidance on Liquidity Risk Management sets out the Commission's minimum expectations regarding stress testing.

Statement C provides the Commission with comfort that the bank has stress tested its liquidity on at least an annual basis and that the results, vulnerabilities and resulting actions have been discussed by the Board.

PART 5 INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS (ICAAP)

5.1 Application

- (1) This Part only applies to licensees who are banks incorporated in the Bailiwick.

5.2 Compliance with the requirement to review capital adequacy

- (1) The Board must regularly review the ICAAP to ensure that –
 - (a) the ICAAP continues to capture all relevant risks facing the licensee;
and
 - (b) the level of capital remains adequate for the licensee and the risks it faces,on a frequency appropriate to the scale and nature of the risk and, at a minimum, once per financial year.
- (2) Licensees must complete Statement D, of the Annual Compliance Form, confirming that –
 - (a) the Board has reviewed the ICAAP;
 - (b) the licensee has maintained regulatory capital at a level compliant with the individual capital guidance set by the Commission; and
 - (c) the level of capital held is adequate given the licensee's risk profile.

5.3 Exceptions

- (1) Where Statement D reveals errors or shortcomings in compliance these must be identified in the “Exceptions” section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

5.4 Timing and frequency

- (1) Statement D must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee’s financial year.

Guidance Note

The Commission will set minimum regulatory capital for subsidiary banks in line with its engagement model.

The ICAAP is a living document and should form part of a subsidiary bank’s planning and risk management framework.

The regularity of the review is for the individual bank to decide, but a review should take place at least once per financial year.

Statement D provides the Commission with comfort that the Board regularly reviews capital adequacy in light of the risk profile of the bank.

PART 6 NOTIFICATIONS TO THE COMMISSION

6.1 Application

- (1) This part applies to all banking licensees.

6.2 Return of the Annual Compliance Form

- (1) Every licensee must ensure that the Annual Compliance Form is correctly completed in relation to –
 - (a) Statement A concerning to the Annual Review;
 - (b) Statement B concerning compliance with licence conditions;
 - (c) Statement C concerning compliance with the requirement to carry out liquidity stress testing;
 - (d) Statement D concerning compliance with the requirement for the Board to review the ICAAP; and
 - (e) The Corporate Governance Statement.
- (2) The Annual Compliance form must be completed and returned to the Commission, –
 - (a) for licensees incorporated in the Bailiwick, within three months of the end of the financial year that it covers; or
 - (b) for licensees that are not incorporated in the Bailiwick, within one month from the publication of the audited accounts of the main group for the financial year that the Annual Compliance form covers.

6.3 Requirement for immediate notification

- (1) A licensee must notify the Commission immediately on the discovery that there are deficiencies within any of the areas covered by the Annual Compliance form.
- (2) Any notification, made under this rule, must include details of any proposed remedial steps.
- (3) The licensee must provide the Commission with any documents or evidence, requested by the Commission, to demonstrate that remedial steps have been undertaken.

PART 7 GENERAL PROVISION

7.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) Other words and expressions have the same meanings as they have in the Law.

PART 8 CITATION AND COMMENCEMENT

8.1 Citation and commencement

- (1) These rules may be cited as the Annual Compliance Return Rules, 2021.
- (2) These rules come into force on 1st November 2021.

DRAFT