

PROJET DE LOI

ENTITLED

The Bankers' Books Evidence (Guernsey) Law, 1954 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is 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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* Ordres en Conseil Vol. XVI, p. 24; as amended by the Bankers' Books Evidence (Amendment) (Guernsey) Law, 1984 (Ordres en Conseil Vol. XXVIII, p. 431); the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (No. XIII of 1994, Ordres en Conseil Vol. XXV(1), p. 271). See also the Magistrate's Court (Guernsey) Law, 1954 (Ordres en Conseil Vol. XVI, p. 103); the Bills of Exchange (Guernsey) Law, 1958 (Ordres en Conseil Vol. XVII, p. 384); the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Magistrate's Court (Guernsey) Law, 2008 (No. XVIII of 2009); the Arbitration (Guernsey) Law, 2016 (No. ** of 2016).

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ARRANGEMENT OF SECTIONS

1. Interpretation.
2. Interpretation of "bank" and "banker".
3. Affidavits.
4. Computation of time.
5. Mode of proof of entries in bankers' books.
6. Proof that book is a banker's book.
7. Verification of copy.
8. Case in which banker, etc., not compellable to produce book, etc.
9. Court may order inspection, etc.
10. Costs.

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THE STATES, in pursuance of their Resolution of the twentieth day of May, nineteen hundred and fifty-three, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Interpretation.

1. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the Acts relating to savings banks" means the Trustee Savings Banks Acts, 1863 to 1949,

"bank" and **"banker"** have the meaning assigned to them by section two of this Law,

[**"banker's books"** includes ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism,]

"any court" means any court, arbitrator or person or persons before whom a legal proceeding is held or taken,

"the appropriate court" means –

- (a) as respects any legal proceeding before the Channel Islands Court of Appeal, that Court,

- (b) as respects any legal proceeding before the Royal Court sitting as a Full Court, that Court, and
- (c) as respects any other legal proceeding, the Royal Court sitting as an Ordinary Court,

"the appropriate judicial officer" means –

- (a) in relation to any legal proceeding in the Channel Islands Court of Appeal, a judge of that Court,
- (b) in relation to any other legal proceeding –
 - (i) in Guernsey, Herm and Jethou, the Bailiff, and
 - (ii) in Alderney, the Chairman of the Court of Alderney,

"legal proceeding" means any civil or criminal proceeding or inquiry, or an arbitration, in which evidence on oath may be given.

(2) Any reference in this Law to the Bailiff or to the Chairman of the Court of Alderney shall be construed as including a reference to the person for the time being lawfully acting in the place of the Bailiff or the Chairman of the Court of Alderney, as the case may be.

(3) Any reference in this Law to any other enactment shall be construed as including a reference to that enactment as amended, extended or applied by any other enactment.

NOTES

In section 1, the words in square brackets were substituted by the Bankers' Books Evidence (Amendment) (Guernsey) Law, 1984, section 1, with effect from 12th June, 1984.

The following case has referred to this Law:

Rea Brothers (Guernsey) Limited v. S.E.C. (1986) 3.GLJ.59.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

The Court of Appeal (Channel Islands) Order, 1949 (whereunder the Channel Islands Court of Appeal was established) has since been revoked by the Order in Council dated 26th May, 1961 and registered on the Records of the Island of Guernsey on 13th June, 1961.

Interpretation of "bank" and "banker".

2. (1) For the purposes of this Law the expression **"bank"** and **"banker"** mean –

- (a) any [person holding or deemed to hold a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, [1993] or any other] person, persons, partnership or company carrying on in the British Islands or the Republic of Ireland the business of bankers,
- (b) any savings bank certified under the Acts relating to savings banks,
- (c) any Post Office savings bank.

(2) The fact that any such savings bank is certified under the Acts relating to savings banks may be proved in any legal proceeding by an office or examined copy of its certificate.

(3) The fact that any such bank is a Post Office savings bank may be proved in any legal proceeding by a certificate purporting to be under the hand of the Controller or a Chief Executive Officer of the Post Office Savings Bank.

NOTES

In section 2, the words in square brackets were inserted by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 59(d), with effect from 1st October, 1994.

The date in square brackets within the square brackets shown, incorrectly, in the printed version of this section as "1993" should read "1994".

Affidavits.

3. An affidavit for the purposes of this Law shall –
- (a) if made in the Island of Guernsey, be made before the Bailiff, a Jurat, the Police Court Magistrate or a Notary Public,
 - (b) if made in the Island of Alderney, be made before a Jurat,
 - (c) if made in the Island of Sark, be made before the Seneschal,
 - (d) if made elsewhere, be made before any person authorised by law in the place in which it is made to take sworn declarations or administer oaths.

NOTES

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 1954, section 10(3) (as originally enacted), with effect from 17th January, 1955, the expression "Police Court" in this section shall be deemed to refer to the Magistrate's Court.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the reference in this section to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

Computation of time.

4. (1) In computing any period of time for the purposes of this Law, a Sunday, Christmas Day, Good Friday, bank holiday or day appointed for public thanksgiving or mourning shall be disregarded.

(2) In this section the expression "**bank holiday**" means a day which is a bank holiday under any Ordinance for the time being in force.

NOTE

In accordance with the provisions of the Bills of Exchange (Guernsey) Law, 1958, section 1B, with effect from 27 July, 1993, the references in this section to a bank holiday shall be construed as references to a public holiday within the meaning of section 1(1) of the 1958 Law.

Mode of proof of entries in bankers' books.

5. Subject to the provisions of this Law, a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.

Proof that book is a banker's book.

6. (1) A copy of an entry in a banker's book shall not be received in evidence under this Law unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

(2) Such proof may be given by a partner or officer of the bank, and may be given orally or by affidavit.

Verification of copy.

7. (1) A copy of an entry in a banker's book shall not be received in evidence under this Law unless it be further proved that the copy has been examined with the original entry and is correct.

(2) Such proof shall be given by some person who has examined the copy with the original entry, and may be given orally or by affidavit.

Case in which banker, etc., not compellable to produce book, etc.

8. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Law, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the appropriate judicial officer made for special cause.

Court may order inspection, etc.

9. (1) On the application of any party to a legal proceeding before any court in the Islands of Guernsey and Alderney, the appropriate court may order that for any of the purposes of such proceeding such party be at liberty to inspect and take copies of any entries in a banker's book which is within the said Islands.

(2) An order under this section may be made either with or without summoning the bank or any other party and shall be served on the bank three clear days before the same is to be obeyed unless the appropriate court otherwise directs.

Costs.

10. (1) The costs of any application to the appropriate court or the appropriate judicial officer under or for the purposes of this Law, and the costs of anything done or to be done under an order of the appropriate court or the appropriate judicial officer made under or for the purposes of this Law shall be in the discretion of the appropriate court or the appropriate judicial officer, as the case may be, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank.

(2) An order under this section against a bank may be enforced as if the bank was a party to the proceeding.

NOTE

The Law received Royal Sanction on 13th April, 1954 and was registered on the Records of the Island of Guernsey and came into force on 29th May, 1954.
