

PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XLIII(1), p. 462; as amended by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (No. XVI of 2008).

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ARRANGEMENT OF SECTIONS

1. Amendment of Law of 1994.
2. Citation.

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THE STATES, in pursuance of their Resolution of the 30th October, 2002^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.

Amendment of Law of 1994.

1. (1) The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended^b (hereinafter called "**the Law of 1994**"), is further amended as follows.

(2) In section 6(2) of the Law of 1994, after the words "in relation to the applicant" insert "and in relation to any person who is or is to be a director, controller or manager of the applicant".

(3) In section 8(1)(a) of the Law of 1994, after the words "in respect of the institution" insert "or in respect of any person who is or is to be a director, controller, manager or employee of the institution".

(4) In sections 8(1)(d) and 9(4)(e) of the Law of 1994, for the words "or manager" substitute ", manager or employee".

^a Article IX of Billet d'État No. XXII of 2002.

^b Order in Council No. XIII of 1994; amended by No. XVII of 2002 and by Guernsey S.I. No. 3 of 2000.

(5) After section 9(4)(g) of the Law of 1994, add the following paragraph –

"(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)."

(6) In sections 10(4)(b), 12(2)(e) and 12(8) of the Law of 1994, for the words "or manager" substitute ", manager or employee".

(7) After section 17 of the Law of 1994, add the following heading and sections –

"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.

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.

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."

(8) After section 18(1)(d) of the Law of 1994 insert the following paragraphs –

- "(e) to make a prohibition order under section 17A prohibiting him from performing any function, any specified function or any specified description of function, or
- (f) to refuse to vary or revoke any such order under section 17A(5),"¹

(9) In section 18(2)(b) of the Law of 1994, after the words "or manager" insert "or employee".

(10) In section 18(8) of the Law of 1994 –

- (a) for "or (d)" substitute ", (d) or (e)"; and
- (b) for "or direction" substitute ", direction or order".²

(11) After section 22 of the Law of 1994 insert the following section –

"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."

(12) In section 25(1) of the Law of 1994, the expression ", with the prior written authority of not less than two ordinary members," is repealed.

(13) In section 25(2) of the Law of 1994, the expression ", with the prior written authority of not less than two ordinary members" is repealed.

(14) In section 25(10) of the Law of 1994, after the words "or manager" insert "or employee".

(15) ...

(16) In section 27(1) of the Law of 1994, the words "with the prior

authority of not less than two ordinary members, and" are repealed.

(17) In section 28(1) of the Law of 1994, the expression ", with the prior authority of not less than two ordinary members," is repealed.

(18) After section 36 of the Law of 1994, insert the following sections –

"Provision as to codes of practice, etc.

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

- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance 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.

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.

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."³

(19) In section 44 of the Law of 1994 –

(a) in paragraph (e) after the word "depositors" insert ", investors or other customers";

(b) in paragraph (f) the word "supervisory" where secondly appearing is repealed,

(c) for paragraph (h) substitute the following paragraph –

"(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,"

- (d) in paragraph (m) for the words "depositors or investors" substitute "depositors, investors or other customers".

(20) After section 45(2)(b) of the Law of 1994, add the following paragraph –

- "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."

(21) In section 56(1) of the Law of 1994 –

- (a) after the definition of the expression "Bailiwick" insert the following definition –

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

- (b) in the definition of the expression "officer of police", after paragraph (c) add the following paragraph –

- "(d) any officer of customs and excise within the meaning of the Customs and Excise (General

Provisions) (Bailiwick of Guernsey) Law, 1972,"

- (c) the definition of the expression "ordinary member" is repealed,
- (d) before the definition of the expression "related company" insert the following definition –

""regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
- (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;
- (e) any other enactment or statutory instrument prescribed for the purposes of this section by regulation of the Commission,".⁴

(22) In section 60 of the Law of 1994, after the words "or rule" wherever appearing, except in subsection (1)(c), insert "or code".

(23) In Schedule 3 to the Law of 1994 –

(a) for paragraph 3(2) substitute the following –

" (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 procedures 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) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick,
 - (vi) any other enactment prescribed for the purposes hereof by regulation of the Commission.";

- (b) in paragraph 3(3)(a) after the word "committed" insert "any offence, and in particular";
- (c) in paragraph 3(3)(b) after the expression "the Ordinance of 1971" insert ", the regulatory Laws";
- (d) in paragraph 3(3)(c) after the words "conducting business" insert "or his suitability to carry on deposit-taking business";
- (e) in paragraph 4 after the word "individuals" insert "resident in the Bailiwick and of appropriate standing and experience";
- (f) after paragraph 6(9) insert the following subparagraph-

" (10) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether an institution is to be regarded as conducting its business in a prudent manner, 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.",

(g) after paragraph 6 insert the following paragraph –

"Power to make regulations.

7. The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark, make regulations amending the provisions of this Schedule."⁵

NOTE

In section 1, subsection 15 was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008, section 13, with effect from 29th October, 2008.

Citation.

2. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003.

NOTE

The Law received Royal Sanction on 17th July, 2003 and was registered on the Records of the Island of Guernsey and came into force on 11th August, 2003.

¹ For subsequent amendments, see the consolidated text of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

² For subsequent amendments, see the consolidated text of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

³ For subsequent amendments, see the consolidated text of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

⁴ For subsequent amendments, see the consolidated text of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

⁵ For subsequent amendments, see the consolidated text of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.