

The restated Banking Supervision (Bailiwick of Guernsey) Law

Insights - 25/10/2021

The Banking Supervision (Bailiwick of Guernsey) Law 2020 (the **2020 Banking Law**) will be implemented with effect from 1 November 2021 repealing and replacing the Banking Supervision (Bailiwick of Guernsey) Law 1994 (the **1994 Banking Law**) as part of the long-term project of the Guernsey Financial Services Commission (the **Commission**) to revise its principal regulatory laws.

What has changed?

The 2020 Banking Law does not fundamentally affect the core approach to regulation of deposit taking business in the Bailiwick and the activities captured by the definition of deposit taking business remain unchanged.

However, many of the details relating to the operation of deposit-taking licensees and the powers of the Commission to supervise such licensees have been amended. In addition, as for all principal regulatory laws, the enforcement powers of the Commission have been moved from the 1994 Banking Law into a new law called the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, essentially aligning the enforcement powers across all regulatory laws.

In our view, the key amendments to the 1994 Banking Law made by the 2020 Banking Law may be characterised broadly as those:

- affecting the obligations of licensees to notify and/or report to the Commission on a periodic or event driven basis;
- further defining the Commission's role with respect to supervising deposit taking business carried on in or from within the Bailiwick and broadening the Commission's supervisory powers; and
- clarifying or codifying current practices.

Summary of the key changes to the 2020 Banking Law

Key changes to licensees' ongoing obligations

1. Approved and vetted supervised persons

The categories of key personnel of licensees that need the Commission's prior no objection to their appointment have been expanded to now cover (a) controllers, (b) significant shareholders, (c) directors, (d) money laundering reporting officer, (e) money laundering compliance officer; (f) compliance officers, (g) chief risk officer, (h) a person who, under the immediate authority of a director or chief executive, is responsible for maintaining the accounts or other records of the body; or (i) the holder of any other role in order to enable the body to fulfil the requirement that the business be directed by at least two individuals in the Bailiwick of appropriate standing and experience and sufficiently independent of each other.

The definition of **controller** in this context has been expanded to now cover shareholder controllers (which has itself been expanded to cover not only those shareholders holding at least 15% of the voting control of the body directly or indirectly, but also beneficial holders of at least 15% of the issued shares in a cell of a protected cell company that is or will be licensed), indirect controllers (broadly, persons on whose instructions directors or controllers are accustomed to act and includes a person which makes it possible to exercise significant influence over the management of a body) and any person who has the power, alone or with another, to appoint or remove a director or member of a similar governing body or its parent.

2. Notified supervised persons

The categories of key personnel whose appointment and resignation requires notification to the Commission has been expanded to cover: (a) a managing director or chief executive of the licensee (or its parent) (other than a person who has a vetted supervised role above); (b) a nominated officer, (c) an auditor, (d) any 'other supervised manager', that is to say, a person appointed otherwise than as a chief executive, to exercise, under the immediate authority of a director or partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership), day-to-day managerial functions in relation to deposit-taking business in respect of which the body is or will be licensed but not including a person who falls into any other category of supervised role and (e) a company secretary.

3. Notification of acquisition or reduction of voting powers

Persons who alone or with associates are entitled to exercise or control the exercise of 15% or more of the voting power in a licensee (or its parent company) are required to notify the

Commission and seek its written approval when it increases its voting power to more than 50% (whether in a single transaction or in a series of transactions).

Conversely, persons who alone or with associates are entitled to exercise or control the exercise of 50% or more of the voting power in a licensee (or its parent company) must notify the Commission when it reduces its voting power to less than 50%.

Supervisory role

4. Rulemaking powers expanded

There are various provisions in the 2020 Banking Law allowing for the Commission to make rules and regulations including regarding:

- deposit-taking business and the carrying on and conduct of such business by licensees;
- the issue, form and content of deposit advertisements;
- unsolicited calls on persons in the Bailiwick (or from persons in the Bailiwick to persons elsewhere) with a view to procuring the making of deposits;
- the preparation, keeping, maintenance, submission to the Commission and publication of accounting records and the form of and information and particulars to be contained in accounting records and the auditor's report; and
- an annual review of the business being carried on by the licensee.

The revision also puts the Commission's power to issue codes of practice and guidance on a statutory footing.

5. Statutory obligation to keep the Commission informed codified

The 2020 Banking Law requires, as an express statutory obligation, that licensees must deal with the Commission on an open and cooperative manner and that the licensee must keep the Commission promptly informed of any matter which ought reasonably to be disclosed to the Commission. This was previously contained in the Code of Practice for Banks.

6. Expansion of powers

There are a number of provisions in the 2020 Banking Law which also broaden the Commission's supervisory powers, including:

- the power to issue directions to all persons who are, or were or who are exempt under the provisions of the 2020 Banking Law, persons who hold supervised roles in such businesses and any person suspected of having contravened any provision of the 2020 Banking Law;

- the expansion of the categories of person from whom the Commission may require the production of information or documentation;
- the expansion of the persons in relation to whom an auditor must whistle blow to include associated entities of any audited party.

New Rules to accompany the 2020 Banking Law

In addition, in order to implement effectively the 2020 Banking Law, the Commission has drafted and consulted with the banking sector on revised rules and guidance to accompany the 2020 Banking Law – the Banking Supervision (Accounts, Disclosure and Reporting) Rules and Guidance 2021 and the Banking Supervision (Large Exposures) Rules and Guidance 2021 (the **Rules**). These Rules will replace the Banking (Accounts) Rules 1994 and the existing Large Exposure policy and will come into effect at the same time as the 2020 Banking Law.

These Rules largely concern the ongoing obligations of those licensees incorporated in the Bailiwick requiring these licensees to:

- a) prepare annual audited accounts in accordance with an approved accounting standard permitted by the Commission (i.e. IFRS, UK GAAP, US GAAP);
- b) make available on request and publish online, no later than one month following the submission of the licensee's annual accounts to the Commission, a number of key metrics including:
 - the Common Equity Tier 1 capital asset ratio calculated as a ratio of common equity tier 1 capital to total risk weighted assets;
 - the Liquidity Coverage Ratio or, where appropriate, the Liquidity Mismatch Ratio;
 - the Leverage Ratio;
 - the Net Stable Funding Ratio,

all of which are defined in more detail in the relevant regulatory returns and guidance issued by the Commission; and

- c) ensure that the licensee's exposure limits comply with the new Rules and if necessary make a quarterly notification of large exposures.

Branches of licensees incorporated outside of the Bailiwick are also subject to quarterly notifications and must report on its ten largest market loans and ten largest credit exposures on a quarterly basis.

Please do be aware that the above is a summary only of certain selected revisions made to the

1994 Banking Law by the 2020 Banking Law for information and does not constitute advice. The full scope of revisions made by the 2020 Banking Law and the rules and guidance thereunder include matters that are not covered in this note. We recommend that licensees carrying on deposit-taking business should contact their usual Ogier contact or the author to discuss any changes that may impact them.

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