

# Legislation Update

## January 2011



### New legislation amending Guernsey regulatory laws and company law.

At the end of 2010, a slew of new legislation received Royal Assent and was registered in the Royal Court. The new legislation amends the regulatory laws relevant to the GFSC and the investment, banking, insurance and fiduciary industries. In summary the changes permit the GFSC to make rules on how licensees conduct their business.

In addition to the amendments to the regulatory laws new standard articles of incorporation for Guernsey companies and new GFSC fees for 2011 have been approved. Laws permitting certain authorities to gather statements have also been amended to restrict the use in criminal proceedings of statements obtained under compulsion.

To assist licensees in keeping up to date with the regulatory laws the GFSC has published the following consolidations which are available on their website [www.gfsc.gg](http://www.gfsc.gg):

- The Protection of Investors (Bailiwick of Guernsey) Law 1987 as amended (the "**POI Law**")
- The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 as amended (the "**Fiduciaries Law**")
- The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended (the "**Banking Law**")
- The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended (the "**GFSC Law**").

A list of the new laws and a brief summary of their provisions are set out below.

### Laws and Regulations

#### The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010

This law inserts a new section 16(2) (a) (aa) into the POI Law which permits the GFSC to make new rules on how

licensees conduct controlled investment business and the manner in which they conduct restricted activities. The GFSC may now prescribe the manner in which licensees 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 client assets, financial resources, the calculation of technical provisions and capital requirements).

#### Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2010 ("Amendment Fiduciary Law")

This law substitutes section 13 (1) of the Fiduciaries Law and permits the GFSC to publish a list of licensees on the GFSC website. This removes the subsections in the old section 13 which (i) enabled the public to request a list of licensees and (ii) gave the GFSC the discretion to publish details of those applicants who had been refused a license.

This law also inserts new sections 31A, 31B and 31C into the Fiduciaries Law. Section 31A permits the GFSC to make new rules about how licensees conduct business and carry out regulated activities.

Section 31 B sets out the particular matters that may be included in the rules:

- general conditions applicable to a licensee
- the manner in which a licensee conducts, governs, manages and operates their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of client assets, financial resources, the calculation of technical provisions and capital requirements)
- prohibitions on carrying out certain restricted activities
- imposition of requirements as to how to exercise discretionary powers
- requirements for licensees to employ persons of specified descriptions
- controlling the relationship between licensed fiduciaries and their servants and agents

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- regulating or prohibiting the carrying on of any regulated activities
- requirements to provide specified information to the GFSC, the public or a prescribed class of persons
- requirement to make provision for the protection of clients in the event of a cessation of business
- imposition of requirements as to the manner and times during which a fiduciary licence is to be displayed or available for inspection by the public
- provision for the settlement of disputes
- requirements for the public disclosure by licensees of financial information, risk exposure and corporate governance
- provisions as to the dealings and relationships between fiduciaries.

Section 31C places an obligation on the GFSC to publish the rules for consultation unless the delay would be prejudicial to the interest of clients or potential clients.

#### **The Regulation of Fiduciaries (Accounts) (Amendment) Rules 2010 (No. 64)**

These rules amend the Regulation of Fiduciaries (Accounts) Rules, 2001 by allowing the GFSC to permit a licensed fiduciary, which is also licensed to conduct another type of financial services business under another of the regulatory laws, to submit its financial statements to the GFSC in accordance with any longer time limit applicable to that other type of business.

#### **The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010**

This law amends the Banking Law to include the same provisions as set out in the Amendment Fiduciary Law so that the GFSC is permitted to publish a list of licensees on the GFSC website and has the powers to make rules relating to the carrying on of deposit taking business.

#### **The Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2010**

These regulations are supplemental and amend the Banking Law.

Rule 1 provides that the GFSC can apply to court for an order that it may revoke a banking licence with immediate effect provided it is in the interests of the public, the depositors or the protection of the reputation of the Bailiwick. Previously the revocation took effect only at the end of the period to appeal expired or the determination of an appeal.

Rule 2 provides that the GFSC has power to appoint inspectors to investigate a bank's business or its ownership or control, if it considers it to be in the interests of the reputation of the Bailiwick as a finance centre. Previously such investigations were permitted only where it would be desirable to do so in the interests of depositors.

Rule 5 amends Schedule 3 of the Banking Law by inserting a new section 6B and 6C.

Section 6B provides that a bank must carry on business in such a way that:

- proprietary acquisitions (including subsidiaries and investments) which amount to more than 5% of the bank's capital base are approved by the GFSC
- the intention to enter into proprietary acquisitions over £1,000,000 other than those falling within the 5% test above are approved by the GFSC
- the transfer of interests of a significant shareholder or shareholder controller are approved by the GFSC
- information on the condition of the bank's asset portfolios is sent to the GFSC on a calendar year quarterly basis
- the bank's board of directors are notified promptly if the institution receives information which could have a material effect on the bank's assets
- all returns required to be submitted to the GFSC are signed by the CEO and the CFO
- all transactions with related companies or associates require prior approval by the bank's board and are not on more favourable terms than a comparable transaction with unrelated companies or people who are not associates.

Section 6C provides that a bank will carry on business with a sufficient number of individuals employed in the Bailiwick to conduct all essential functions (including risk), carry out all permanent compliance and risk management in the Bailiwick and have an internal audit function which complies with the published guidance of the GFSC.

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## **The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law 2010**

This law amends sections 19(1) and 27 of the GFSC Law.

Section 19 (1) has been amended so that the wording defines more narrowly the GFSC's non-delegable functions. The function of considering representations is non-delegable only where those representations concern decisions that relate to licensing issues such as licence cancellation, revocation and authorisation.

Section 27 on confidentiality now contains a new subsection (8) which provides that the section is subject to the disclosure requirements of the regulatory laws.

## **The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010**

The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 and the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 are now included within the definition of the 'regulatory Laws' in the POI Law, the Banking Law, the Fiduciary Law, the Insurance Business Law, the Insurance Managers Law and the Registration of Non-Regulated Financial Services Businesses Law.

## **The Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009**

This law amends those laws which contain a power giving a regulatory authority the right to gather statements. Such statements can now only be used in non-criminal cases subject to certain exceptions including establishing whether that person has committed perjury or has perverted the course of justice. In particular, this law amends sections 264(3) and 265(4) of the Companies (Guernsey) Law 2008 as amended (the "**Companies Law**") which dealt with an auditor's right to be provided with information or explanations about a company or its associated overseas companies and the provisions of certain regulatory laws where the GFSC has a right to be provided with statements by certain persons.

## **The Companies (Standard Articles of Incorporation) Regulations 2010**

These regulations replace the standard articles of incorporation approved under the Companies Law in 2008. The existing articles were plagued with typographical and formatting errors. These errors have now been addressed in the new articles of incorporation. A copy of the new standard articles of incorporation can be found on the Registry's website at: [www.guernseyregistry.com](http://www.guernseyregistry.com).

## **Fees**

### **The Amalgamation and Migration of Companies (Fees payable to the Guernsey Financial Services Commission) Regulations, 2010**

These regulations provide that the fee for GFSC consent to an amalgamation under the Companies Law is £2000 (previously £1500) and for the emigration of a supervised company is £2000 (previously £1500).

### **The Financial Services Commission (Fees) Regulations, 2010**

These regulations set out the 2011 fees applicable to bank, fiduciary, investment and insurance licensees.

### **The Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2010, (No. 63)**

These regulations set out the penalty rates for licensee's who make late filings and are calculated as rising from £100 for the first month to £200 to the second month and then £300 for each subsequent month.

### **The Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2010**

These regulations prescribe the fees payable to the GFSC by any PCC or ICC which are licensed to carry on insurance business. In general the fees are £5040 to be licensed, £1650 for each trading cell and £130 for each dormant cell.

### **The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) (Fees) Regulations, 2010**

These regulations make provision for the payment of an application fee of £1090 and an annual fee of £1090 plus an amount ranging from £60 to £260 depending on the number of premises out of which the services are offered.

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