

# Revision of Laws – industry specific changes: Banking and Fiduciaries Laws

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In this Update, we look at some of the changes that have been made to Guernsey's new banking and fiduciaries legislation.

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## Introduction

In this week's Update, we consider some of the changes that have been made specifically for the banking and fiduciaries sectors. The investment sector will be considered separately in a later Update.

First and foremost, the following laws came into force, and are effective from, **Monday 1 November 2021**:

- the Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the **2020 Banking Law**) and
- the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **2020 Fiduciaries Law**).

## Banking sector

### Change of control

As noted in last week's Update ([here](#)), the new regulatory laws use new terminology in relation to change of control and introduce the concept of a 'Supervised Role' which comprises three categories, namely 'Approved Supervised Role', 'Vetted Supervised Role' and 'Notified Supervised Role'. The persons, roles, positions and/or interests that fall into those three categories, and their respective notification requirements, vary according to the industry sector concerned in order to follow the relevant international regulatory standard.

From a banking perspective, notable changes include:

- **Vetted Supervised Roles** - there is a considerable list of roles and positions that fall into the Vetted Supervised Role category, including a chief risk officer and any person who, under the immediate authority of a director or chief executive, is responsible for maintaining the accounts or other records of the body. A person cannot become the holder of a Vetted Supervised Role unless the Guernsey Financial Services Commission (the **Commission**) has given its prior no objection to such appointment.
- **Notified Supervised Roles** – the role of 'nominated officer' falls into the 'Notified Supervised Role' category and requires that the licensee notify the Commission within 14 days of any change in that role. This is in direct contrast to the notification requirements for a nominated officer set out in the AML Handbook which expressly states that there is *no* obligation to advise the Commission of the name, title or email address of the nominated officer *unless* the nominated officer is acting in place of the Money Laundering Reporting Officer (Rule 2.8.3, para. 74). This is an important distinction to be aware of.
- **Approved Supervised Roles** – holders of Approved Supervised Roles (that is shareholder controller, indirect controller or significant shareholder) are only required to obtain prior no objection where they are to be appointed to a licensee incorporated in the Bailiwick, therefore the no objection requirements do **not** apply to Approved Supervised Roles of **branches**. However, those persons are required to give notice within 14 days of becoming holder of a Supervised Role.

- **Controllers** – new provisions apply in relation to 'additional controller holding' and 'reduced controller holding'. Essentially, an additional controller holding is where a person entitled to (control the) exercise of 15 per cent or more of voting power becomes entitled to such further percentage as to increase the total to **more than** 50 per cent; and conversely a reduced controller holding is where a person's entitlement to (control the) exercise of more than 50 per cent is reduced to 50 per cent or less. In each case, it is a requirement that the holder notify the Commission (and in the case of an additional controller holding, obtain its written approval) on becoming/ceasing to be entitled to exercise the voting power and regardless of whether the additional or reduced voting power came about in a single transaction or by a series of transactions over any period of time.
- **Supervised Roles** - various provisions of the 2020 Banking Law apply to every holder of a Supervised Role, regardless of the category, for example the Commission can:
  - (a) give directions to the holder of a Supervised Role as a 'directed person' requiring it to do or not to do anything; or
  - (b) require information and/or documentation from the holder of a Supervised Role of a 'relevant person'; or
  - (c) request a meeting with the holder of a Supervised Role to discuss any aspect of the operation, regulation or licensing of a licensee or former licensee and whenever the Commission thinks fit.

All persons holding a Supervised Role should therefore be made aware of the new provisions that apply to them, along with any filing requirements and other implications.

### Annual reviews

The Commission has issued the Annual Compliance Return Rules and Guidance, 2021 (the **Rules**) available [here](#), which require licensees to undertake an annual review of its business and any business carried on by any undertaking established by them. The scope of the annual review is broad and includes, among other things, individual loans, asset classification and loss provisions; control systems; financial record keeping and data systems; and risk management.

Confirmation that the annual review has been completed must be submitted to the Commission as part of the Annual Compliance Form within three months of the relevant year-end for subsidiary banks incorporated in the Bailiwick, and within one month from the publication of audited accounts of the main group for the year-end concerned for branches.

### Public disclosure of financial statements

Flexibility has been added allowing subsidiary banks incorporated in the Bailiwick to publish audited accounts on its website which it must do so no later than one month following the submission of its accounts to the Commission. If the subsidiary bank does not have its own website, it can use a group website provided that it clearly indicates the subsidiary to which the information applies.

### Fiduciary sector

#### Lead and joint licensees

The concept of 'lead' and 'joint' licensees has been dispensed with and replaced by 'primary' and 'secondary' licensees respectively. All lead licensees prior to 1 November 2020 will have automatically converted to 'primary' fiduciary licensees and all joint licensees will have been converted to 'secondary' licensees, unless written notice to the contrary had been given to the Commission beforehand.

A primary licensee **cannot** have a corporate director or, in the case of a limited partnership, a corporate general partner. While a secondary licensee is permitted to have a corporate director it must be in the same group as the primary licensee **and** is prohibited from actively trading. The Commission's expectation is that this reflects current practice whereby 'joint' (now secondary) licensees are passive and do not operate independently from the 'lead' (now primary) licensee and that the terms of trust instruments will already be sufficiently broad to permit a lead licensee to receive fees for services provided by its secondary licensee.

Fiduciaries should therefore carefully consider the services performed by any secondary licensees to ensure that they are not actively trading post 1 November and that charging provisions in trust instruments envisage and permit payment direct to the primary licensee.

## Change of control

The role of director of a licensed fiduciary is a Supervised Role under the 2020 Fiduciaries Law and falls within the category of an 'Approved Supervised Role'. A person cannot become a director, ie the holder of an Approved Supervised Role, without the Commission's prior no objection to such appointment.

Similarly to the 2020 Banking Law, under the 2020 Fiduciaries Law the holder of a Supervised Role is subject to various provisions throughout the law, which apply to *every* holder of a Supervised Role, regardless of the category, for example notification of any change of Supervised Role. All persons holding a Supervised Role should therefore be made aware of the new provisions that apply to them, along with any requirements and implications.

## Regulated activities

Additional activities have been included as constituting a 'regulated activity' requiring a fiduciary licence, including in the context of trust administration: acting as an enforcer for trusts, and in connection with the provision of company administration: the provision of and/or acting as a partner of a partnership or member of a limited liability partnership.

## Discretionary exemptions

The discretionary exemption has been retained, ie allowing the Commission to specifically, and in writing, exempt a person from requiring a fiduciary licence, but the applicable provisions have been greatly expanded. In particular, there is a requirement to notify the Commission of any changes to facts and/or circumstances or to any information previously supplied within 14 days of becoming aware of such (to ensure that the facts and/or circumstances justifying the exemption remain unchanged). Failure to so notify the Commission within the requisite period is an offence.

## Conclusion

In next week's Update, we will focus on some of the key changes that have been made specifically for the investment sector by the new Protection of Investors (Bailiwick of Guernsey) Law, 2020.

If you require legal advice in respect of any of the matters covered in this Update, or otherwise related to the new regulatory laws, please do get in touch.

## Contacts

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