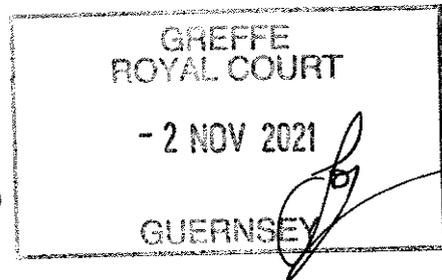


GUERNSEY STATUTORY INSTRUMENT NO.130



THE BANKING SUPERVISION (ANNUAL COMPLIANCE RETURN) RULES, 2021

Made: 1st November 2021

Coming into force: 1st November 2021

The Guernsey Financial Services Commission ("the Commission"), in exercise of the powers conferred on it by section 9, 37, 38 and 40 of the Banking Supervision (Bailiwick of Guernsey) Law, 2020 ("the Law") makes the following Rules.

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PART 1 INTRODUCTION

1.1 Application

- (1) The Banking Supervision (Annual Compliance Return) Rules, 2021 complement, and should be read in conjunction with, section 40 of the Law.
- (2) These Rules apply to all licensees unless specifically stated otherwise in the applicable rule.
- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

PART 2 SCOPE OF THE ANNUAL REVIEW

2.1 Application and scope

- (1) This Part applies to all banking licensees.
- (2) The Annual Review must include –
 - (a) the business carried on by the licensee; and
 - (b) the business carried on by any undertaking established by them.

2.2 Areas to be included in the Annual Review

- (1) A licensee must ensure that the following matters are reviewed as part of the Annual Review process.

2.2.1 Individual loans, asset classification, and loss provisioning which includes consideration of the on and off balance sheet exposures.

- (1) The Annual Review must provide assurance that –
 - (a) the bank has appropriate credit risk assessment processes and effective internal controls commensurate with the size and risk profile of its business;
 - (b) loans and assets are reliably classified on the basis of credit risk; and
 - (c) the bank's aggregate amount of individual and collectively assessed loss provisioning should be adequate to absorb estimated credit losses.

2.2.2 Control systems

- (1) A review of the effectiveness of the control systems in place must be undertaken and must include-
 - (a) confirmation that pre-submission controls are in place to ensure the timely and accurate preparation and submission of all returns, required under the Law, to the Commission; and
 - (b) ensure any inaccuracies in any information presented to the Commission under subsection (a) are identified, corrected, and reported to the Commission without further delay.
- (2) Where the required submissions have not occurred, or have been returned late, measures must be put in place to ensure that the oversight is not repeated.

2.2.3 Financial record keeping systems and data systems

- (1) A review of the reliability of all financial record keeping systems and all data systems must be undertaken, including, but not limited to –
 - (a) any reports of errors and omissions;
 - (b) operational risk events;
 - (c) system breakdowns;
 - (d) records of write-offs;
 - (e) sundry losses;
 - (f) complaints monitoring undertaken by compliance teams; and
 - (g) internal or external auditor reports submitted to the board for review.

- (2) Where errors have occurred, a review of the measures that have been put in place to prevent reoccurrence must be included.
- (3) Where a licensee outsources record keeping or the management and operation of data systems, including transaction monitoring and sanctions screening, to its group or a third party, the review must assess the arrangements in place to ensure the effectiveness of the service being performed and its compliance with local legal and regulatory requirements.

2.2.4 Business activity undertaken without director knowledge

- (1) The review must be satisfied that the business is undertaking activities consistent with –
 - (a) Board expectations; and
 - (b) the scope of knowledge and experience of the directors.
- (2) Where the licensee is a branch the review must –
 - (a) consider how local management maintain oversight of the various aspects of the business; and
 - (b) provide a description of how these activities are reported to the parent bank.
- (3) Where a director of a parent board has direct responsibility for any aspect of the branch, the individual and their areas of responsibility must be identified.

2.2.5 Responsibilities and conduct of the Board

- (1) The responsibilities and conduct of the Board must be reviewed in line with The Finance Sector Code of Corporate Governance (“the Code”)¹.
- (2) The Annual Review must provide assurance that an effective corporate governance process is in place which is appropriate to the nature, scale, and complexity of the licensee’s business.
- (3) The Commission must be informed when a licensee is subject to compliance with, or is required to report against, a non-Commission, equivalent code and a comparison must be carried out between local governance measures and the first seven principles of the Code².

2.2.6 Risk management

- (1) The Annual Review must consider whether the Board has ensured that a risk management process is in place which is commensurate with the risk profile of the licensee and that –
 - (a) a sound risk management culture is established;
 - (b) risk-taking policies and processes are developed which are consistent with the risk management strategy and the established risk appetite;
 - (c) uncertainties attached to risk measurement are recognised;
 - (d) appropriate limits are established that are consistent with the risk appetite, risk profile, and capital strength and that they are understood by, and regularly communicated to, relevant staff; and

¹ The Finance Sector Code of Corporate Governance is available on the Commission’s website, <https://www.gfsc.gg>.

² Principle 8 in shareholder relations is not relevant for the purposes of this review.

- (e) senior management monitor and control all material risks consistent with the approved strategies and risk appetite.
- (2) Where the licensee is a branch, the review must consider how the risks, to which the Guernsey branch is exposed, are considered and reviewed at local management level and how these are reported to the appropriate executive level within the parent bank.
- (3) All licensees must identify the individuals, employed within the Bailiwick, who are responsible for risk management³.

2.2.7 The control environment

- (1) The Annual Review must assess whether the licensee has an internal control framework that is adequate to establish a properly controlled operating environment for the conduct of its business, including –
 - (a) organisational structure including, but not limited to –
 - (i) definitions of duties and responsibilities, including clear delegation of authority;
 - (ii) decision-making policies and processes; and
 - (iii) separation of critical functions;
 - (b) accounting policies and processes including, but not limited to –
 - (i) reconciliation of accounts;
 - (ii) control lists; and
 - (iii) information for management;

³ In accordance with section 9 of Schedule 2 of the Law.

(c) checks and balances, including, but not limited to –

- (i) segregation of duties;
- (ii) cross-checking;
- (iii) dual control of assets; and
- (iv) double signatures; and

(d) safeguarding assets and investments including, but not limited to –

- (i) physical control; and
- (ii) computer access

and taking into account the licensee’s risk profile.

(2) The Annual Review must also assess whether there is a robust and independent internal audit function.

2.3 Timing and frequency

(1) The Annual Review must –

- (a) be returned as part of the Annual Compliance Form;
- (b) be submitted in accordance with rule 6.2; and
- (c) must cover the same period as the licensee’s financial year.

2.4 Exceptions

- (1) Where the Annual Review reveals errors or shortcomings in compliance, with any of the areas set out in Rule 2.2, these must be identified in the "Exceptions" section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

PART 3 STATEMENT ON COMPLIANCE WITH LICENCE CONDITIONS

3.1 Application

- (1) This Part applies to all banking licensees.

3.2 Compliance with standard conditions

- (1) The licensee must complete Statement B of the Annual Compliance Form with reference to its compliance with the standard conditions imposed on its banking licence.
- (2) Where the licensee believes that it has not been in full compliance then the "Exceptions" section must be completed including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

3.3 Compliance with additional conditions

- (1) The licensee must complete Statement B with reference to its compliance with any additional conditions imposed, by the Commission, on its banking licence.
- (2) Where the licensee believes that it has not been in full compliance then the "Exceptions" section must be completed including –
 - (a) the nature of the non-compliance;

- (b) the cause of the non-compliance;
- (c) the duration of the non-compliance; and
- (d) the steps taken to remedy the position.

3.4 Timing and frequency

- (1) Statement B must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee's financial year.

PART 4 STATEMENT ON COMPLIANCE WITH LIQUIDITY STRESS TESTING

4.1 Application

- (1) This Part only applies to licensees who are banks incorporated in the Bailiwick.

4.2 Compliance with the requirement to undertake liquidity stress testing

- (1) Licensees, incorporated in the Bailiwick, must undertake liquidity stress testing on a frequency appropriate to the scale and nature of the risk and, at a minimum, once per financial year.
- (2) Licensees must complete Statement C, of the Annual Compliance Form, confirming that –
 - (a) it has stress tested its liquidity; and
 - (b) the results, vulnerabilities, and resulting actions have been considered by the Board.

4.3 Exceptions

- (1) Where Statement C reveals errors or shortcomings in compliance these must be identified in the "Exceptions" section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;

- (c) the duration of the non-compliance; and
- (d) the steps taken to remedy the position.

4.4 Timing and frequency

- (1) Statement C must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee's financial year.

PART 5 INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS (ICAAP)

5.1 Application

- (1) This Part only applies to licensees who are banks incorporated in the Bailiwick.

5.2 Compliance with the requirement to review capital adequacy

- (1) The Board must regularly review the ICAAP to ensure that –
 - (a) the ICAAP continues to capture all relevant risks facing the licensee;
and
 - (b) the level of capital remains adequate for the licensee and the risks it faces,

on a frequency appropriate to the scale and nature of the risk and, at a minimum, once per financial year.

- (2) Licensees must complete Statement D, of the Annual Compliance Form, confirming that –
 - (a) the Board has reviewed the ICAAP;
 - (b) the licensee has maintained regulatory capital at a level compliant with the individual capital guidance set by the Commission; and
 - (c) the level of capital held is adequate given the licensee's risk profile.

5.3 Exceptions

- (1) Where Statement D reveals errors or shortcomings in compliance these must be identified in the "Exceptions" section of the Annual Compliance Form, including –
 - (a) the nature of the non-compliance;
 - (b) the cause of the non-compliance;
 - (c) the duration of the non-compliance; and
 - (d) the steps taken to remedy the position.

5.4 Timing and frequency

- (1) Statement D must –
 - (a) be returned as part of the Annual Compliance Form;
 - (b) be submitted in accordance with rule 6.2; and
 - (c) cover the same period as the licensee's financial year.

PART 6 NOTIFICATIONS TO THE COMMISSION

6.1 Application

- (1) This part applies to all banking licensees.

6.2 Return of the Annual Compliance Form

- (1) Every licensee must ensure that the Annual Compliance Form is correctly completed in relation to –
 - (a) Statement A concerning the Annual Review;
 - (b) Statement B concerning compliance with licence conditions;
 - (c) Statement C concerning compliance with the requirement to carry out liquidity stress testing;
 - (d) Statement D concerning compliance with the requirement for the Board to review the ICAAP; and
 - (e) The Corporate Governance Statement.
- (2) The Annual Compliance Form must be completed and returned to the Commission, –
 - (a) for licensees incorporated in the Bailiwick, within three months of the end of the financial year that it covers; or
 - (b) for licensees that are not incorporated in the Bailiwick, within one month from the publication of the audited accounts of the main group for the financial year that the Annual Compliance Form covers.

6.3 Requirement for immediate notification

- (1) A licensee must notify the Commission immediately on the discovery that there are deficiencies within any of the areas covered by the Annual Compliance Form.
- (2) Any notification, made under this rule, must include details of any proposed remedial steps.
- (3) The licensee must provide the Commission with any documents or evidence, requested by the Commission, to demonstrate that remedial steps have been undertaken.

PART 7 GENERAL PROVISION

7.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) Other words and expressions have the same meanings as they have in the Law.

PART 8 CITATION AND COMMENCEMENT

8.1 Citation and commencement

- (1) These rules may be cited as the Annual Compliance Return Rules, 2021.
- (2) These rules come into force on 1st November 2021.

Dated this 29th day of October 2021



C.A. SCHRAUWERS

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

EXPLANATORY NOTE

These Rules have been drafted in line with the Commission's Revision of Laws Implementation Project.

Following the implementation of the 2020 Laws all Rules and guidance made, under the previous enactments, were checked for validity and legality. These Rules were drafted in order to ensure that the regulatory regime in place, under the previous Law, continues to operate as further detail is required below the level of the Law. They have been drafted following the Commission's current legal drafting practice.