

GUERNSEY STATUTORY INSTRUMENT

2010 No. 94

**The Banking Deposit Compensation Scheme
(Liability of Participants to Compensation Levy)
(Bailiwick of Guernsey) Regulations, 2010**

<i>Made</i>	<i>9 November, 2010</i>
<i>Coming into operation</i>	<i>9 November, 2010</i>
<i>Laid before the States</i>	<i>, 2010</i>

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 17(2) and 18(2) of, and Schedule 2 to, the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Quarterly returns to be made by participants.

1. (1) Each participant shall make a return to the Board within 28 days of each quarter end date, giving the following information for that participant as at that quarter end date -

- (a) the value of Smaller Retail Deposits,
- (b) the number of Larger Retail Deposits,

^a Ordinance No. XLVIII of 2008.

- (c) the value of Larger Retail Deposits, and
- (d) the value of total Retail Deposits, which shall be calculated by the addition of the value of Smaller Retail Deposits to the value of Large Retail deposits.

(2) The Board may require an independent audit of any return made under paragraph (1) at the expense of the relevant participant.

(3) For the purposes of these Regulations, the quarter end dates shall be –

- (a) 31st March,
- (b) 30th June,
- (c) 30th September, and
- (d) 31st December.

Calculation of Value at Risk etc.

2. (1) For each participant, the Board shall calculate the Value at Risk as at each quarter end date, and the Value at Risk -

- (a) in respect of Smaller Retail Deposits, shall be the combined value of Smaller Retail Deposits for that Bank, and

(b) in respect of Larger Retail Deposits, shall be the product of the number of Larger Retail Deposits and £50,000.

(2) For each participant –

(a) the Total Value at Risk shall be the sum of the Values at Risk in paragraph (1)(a) and (b), and

(b) the Capped Value at Risk ("the CVAR") shall be the lesser of the Total Value at Risk and £100,000,000.

(3) The Total CVAR shall be the sum of the CVAR for every participant; provided that where a participant is in default, the CVAR for that participant shall be excluded from the Total CVAR.

Calculation of insurance levy.

3. (1) Where the Board proposes to impose an insurance levy under section 17(1) of the Ordinance, it shall calculate for the year in respect of which it proposes to impose such a levy –

(a) the CVAR for each participant, and

(b) the Total CVAR,

on the basis of returns made to the Board for the quarter end date preceding the date on which such levy is due.

(2) Notwithstanding the provisions of paragraph (1) and regulation 2, where it is not possible to perform the calculation in paragraph (1) as the relevant information has not been provided to the Board, it may in its absolute discretion calculate –

(a) the CVAR for any participant in respect of which the information is not available, and

(b) the Total CVAR,

on the basis of any relevant available information, including but not limited to, any return provided in respect of a previous quarter end date.

(3) Where the Board imposes an insurance levy, the levy imposed on a participant shall be in proportion to the ratio that the CVAR for that participant, calculated as in paragraphs (1) or (2) as appropriate, bears to the Total CVAR calculated on the same basis, so that the total insurance levy imposed on the participants in respect of that year shall be equal to the premium payable by the Board.

(4) If a participant defaults before the insurance levy imposed on him has been paid in respect of any year, the Board shall allocate to the other participants the amount of the levy which remains unpaid by that participant in the same proportion as paid by those other participants in their own right for the purposes of an insurance levy that year.

(5) For the avoidance of doubt, the relevant Total CVAR will not include any sum in respect of a new participant who joined the Scheme after the date on which an insurance levy falls due, provided that where a new participant joins the Scheme, the Board may impose an insurance levy on that participant in respect of the remainder of the year in which he joins on such basis as it considers fair and reasonable in all the circumstances.

(6) Any insurance levy paid to the Board pursuant to paragraph (5) shall be refunded to the other participants in proportion to the payment by those participants in their own right for the purposes of an insurance levy in respect of that year.

(7) Where, as the result of a claim under any insurance policy held by the Board in respect of compensation payable under the terms of the Scheme, the premium payable in any year is higher than in the year immediately preceding the claim, the Board may in its absolute discretion make such adjustments to the insurance levy imposed on each participant to ensure, in the opinion of the Board, that a new participant is not responsible for paying any share of such increase in premium in respect of a default the date of which precedes the joining date of that participant.

Calculation of compensation levy.

4. (1) Where a compensation levy under section 18 of the Ordinance exceeds the sum of £10,000,000, the remainder of that levy shall, as prescribed in Schedule 2 to the Ordinance, be allocated amongst the participants in accordance with this regulation.

(2) The Board shall calculate –

(a) the CVAR for each participant, and

(b) the Total CVAR,

on the basis of returns made to the Board for the quarter end date preceding the date of the declaration of default ("**the default date**").

(3) Notwithstanding the provisions of paragraph (2) and regulation 2, where it is not possible to perform the calculation in paragraph (1) as the relevant information has not been provided to the Board, it may in its absolute discretion calculate –

(a) the CVAR for any participant in respect of which the information is not available, and

(b) the Total CVAR,

on the basis of any relevant available information, including but not limited to, any return provided in respect of a previous quarter end date.

(4) The Board shall impose the sum calculated in respect of the remainder of the levy to be paid by each participant in proportion to the ratio that the CVAR of that participant calculated as in paragraphs (2) or (3) as appropriate bears to the Total CVAR calculated on the same basis.

(5) For the avoidance of doubt, the Total CVAR will not include any sum in respect of a new participant who joined the Scheme after the relevant default date, so that a new participant shall not be liable for any portion of a compensation levy imposed in respect of a declaration of default made prior to the date of its participation in the Scheme.

Interpretation.

5. (1) In these Regulations, unless the context requires otherwise –

"**the Board**" means the Guernsey Banking Deposit Compensation Board appointed under section 3 of the Ordinance,

"**default date**" has the meaning set out in regulation 4(3),

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**joining date**", in respect of a new participant, shall mean the date when it is granted a banking licence,

"**Larger Retail Deposits**" means all those deposits held with a Bank as at the quarter end dates in a specific name or names which are qualifying deposits and the combined balance of which held in each specific name or names exceeds £50,000,

"**new participant**" means a participant which joined the Scheme after 26th November 2008 with effect from its joining date,

"participant" means a person who holds a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994^b,

"the Ordinance" means the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008,

"quarter end date" shall have the meaning given in regulation 1(3),

"Scheme" means the Guernsey Banking Deposit Compensation Scheme as established by the Ordinance,

"Smaller Retail Deposits" means all those deposits held with a participant as at the quarter end date in a specific name or names which are qualifying deposits and the combined balance of which held in each specific name or names does not exceed £50,000,

^b Order in Council No. XIII of 1994; as amended by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002 (No. XVII of 2002); the Insurance Business (Bailiwick of Guernsey) Law, 2002 (No. XXI of 2002); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003 (No. XVI of 2003); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (No. XVI of 2008); the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008 (No. IV of 2009); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2000 (G.S.I. No. 3 of 2000); the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 1 of 2008); the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010 (G.S.I. No. 35 of 2010).

"subordinate legislation" means any statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"Value at Risk", "Total Value at Risk", "Capped Value at Risk", "CVAR", and "Total CVAR" have the meanings set out in regulation 2,

and other words and phrases in these Regulations have the same meanings as in the Ordinance.

- (2) For the avoidance of doubt, in these Regulations –
- (a) any figures relating to deposits with a participant relate to accounts held by that participant including deposits with any other entity or brand name which is covered under the terms of that participant's licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, and
 - (b) the making of a return by or the obtaining of any information from a participant under these Regulations is without prejudice to any other power of the Board set out in the Ordinance to obtain information from any participant.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Regulations.

(4) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Revocation.

6. The Banking Deposit Compensation Scheme (Liability of Participants to Compensation Levy) (Bailiwick of Guernsey) Regulations, 2008^d are hereby revoked.

Citation.

7. These Regulations may be cited as the Banking Deposit Compensation Scheme (Liability of Participants to Compensation Levy) (Bailiwick of Guernsey) Regulations, 2010.

Commencement.

8. These Regulations shall come into force on the 9th day of November, 2010.

Dated this 9th day of November, 2010



Deputy C.S. McNulty-Bauer

Minister of the States Commerce and Employment Department

For and on behalf of the Department

^c Ordres en Conseil Vol. XIII, p. 355.

^d Guernsey Statutory Instrument No. 1 of 2009.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe, for the purposes of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008, the manner in which the individual liability of participants in the Guernsey Banking Deposit Compensation Scheme to a compensation levy and an insurance levy in respect of a default is to be calculated.