

GUERNSEY STATUTORY INSTRUMENT

2012 No. 55

**The Image Rights (Bailiwick of Guernsey)
Regulations, 2012**

<i>Made</i>	<i>28th November , 2012</i>
<i>Coming into operation</i>	<i>3rd December , 2012</i>
<i>Laid before the States</i>	<i>, 2012</i>

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 7(3), 11(1), 92, 96, 97, 101 and 111 of the Image Rights (Bailiwick of Guernsey) Ordinance, 2012^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Registered Image Rights Agents

Amendment of the Image Rights Ordinance.

- 1.** The Image Rights (Bailiwick of Guernsey) Ordinance, 2012 ("**the Ordinance**") is amended as follows.
- 2.** In section 96 of the Ordinance, for "agent" substitute "registered image rights agent".

^a Approved by the States of Deliberation on the 28th November 2012.

Acts which must be done by a registered image rights agent.

3. (1) An application for the registration of a personality or image made under sections 11(2)(c) or 11(3)(e) of the Ordinance respectively must be made by a registered image rights agent.

(2) The Registrar shall have no obligation to accept or deal with any application which is made in contravention of this Regulation.

Manner of application for registration.

4. (1) An application for the registration of a personality made under sections 11(2)(a) or 11(2)(b) of the Ordinance must be made at the Office of the Registrar in person.

(2) The Registrar shall have no obligation to accept or deal with any application which is made in contravention of this Regulation.

Register of image rights agents.

5. (1) The Registrar shall keep and maintain the register of image rights agents ("**the Register**").

(2) The Register shall contain the names, business addresses, dates of registration, contact details, relevant experience and/or qualifications of the registered image rights agents.

(3) The Register shall be kept in such manner as the Registrar may determine and may be kept in paper or electronic form.

(4) The Registrar shall not enter the particulars described in paragraph (2) of any person in the Register unless that person –

- (a) is a qualifying person,
- (b) has a business address within the Bailiwick,
- (c) has paid the relevant registration fee to the Registrar,
and
- (d) has completed an image rights training course specified
by rules made by the Registrar.

(5) For the purposes of these Regulations –

"qualifying person" means a person who is ordinarily resident in the Bailiwick and who is –

- (a) an Advocate,
- (b) a member of the Bar of England and Wales, Northern Ireland
or the Faculty of Advocates in Scotland,
- (c) a Solicitor of the Senior Courts of England and Wales, of the
Court of Judicature of Northern Ireland, or in Scotland,
- (d) a person whose name is entered on the register of patent
attorneys under the Copyright, Designs and Patents Act 1988^b
or the list of professional representatives under Article 134 of

^b An Act of Parliament (1988 c.48).

the European Patent Convention of 5th October 1973^c,

- (e) a person whose name is entered on the register of registered trade mark attorneys under the Trade Marks Act 1994^d,
- (f) a director, manager or other similar officer of a corporate services provider who has a qualification –
 - (i) accredited by the Qualifications and Credit Framework as a Level 6, 7 or 8 qualification in the subject area of intellectual property or law,
 - (ii) accredited by the Qualifications and Credit Framework as a Level 7 or 8 qualification in any other relevant subject area, as the Registrar may by rules specify, or
 - (iii) which has been specified in rules made by the Registrar, and
- (g) such other person who, by reason of –
 - (i) that person's qualifications or experience, or
 - (ii) in the case of a body corporate, the qualifications or experience of any director, manager or other similar officer of the body corporate,

^c As amended by the Act of 17 December 1991 and of 29 November 2000.

^d An Act of Parliament (1994.c.26).

the Department, after consultation with the Registrar, determines to be fit and proper to act as a registered image rights agent, and

"**relevant registration fee**" means such sum, not exceeding £5,000, as the Registrar may by rules specify.

(6) The Registrar may require a person to provide such additional information and documents as the Registrar may reasonably require for the purpose of determining whether such a person satisfies the criteria required under paragraph (4).

Annual registration fee.

6. (1) A person whose particulars are entered on the Register shall, on or before the 31st December in each year, other than the year in which that person's particulars are first entered on the Register, pay to the Registrar an annual registration fee of such sum, not exceeding £5,000, as the Registrar may by rules specify.

(2) Prior to the payment of the annual registration fee, the Registrar may require confirmation from a person referred to in paragraph (1) that that person continues to satisfy the criteria required under regulation 5(4) and that the particulars entered on the Register in relation to that person are correct.

(3) The Registrar may require a person to provide such additional information and documents as the Registrar may reasonably require for the purpose of providing confirmation to the Registrar under paragraph (2) that such a person continues to satisfy the criteria required under regulation 5(4).

Amendment and correction of the Register.

7. (1) A person whose particulars are entered on the Register shall notify the Registrar promptly of any change in the particulars relating to it entered in the Register and the Registrar shall, on the payment of an amendment fee of such sum, not exceeding £100, as the Registrar may by rules specify, amend the Register accordingly provided that such a person continues to satisfy the criteria required under regulation 5(4).

(2) Any person may apply for the correction of an entry in the Register to the Registrar who may, upon being satisfied that such entry has been made in error or that any entry is incorrect, correct the entry in whatever manner seems most appropriate.

(3) No correction of any entry under paragraph (2) shall be made unless the Registrar has first notified the proposed correction to the person appearing to the Registrar to be affected, has given that person the opportunity to make written representations regarding the same and has taken into account any such representations.

Erasure, suspension and refusal to recognise.

8. (1) The Registrar may -

- (a) erase from the Register the name of any person registered in it, or
- (b) suspend a person's registration,

on any of the grounds specified in paragraph (2).

(2) The grounds are that -

- (a) the person has ceased to be a qualifying person or to have a business address within the Bailiwick,
- (b) the person has not paid the annual registration fee due in accordance with regulation 6,
- (c) the person, in the opinion of the Registrar -
 - (i) is guilty of misconduct or incompetence,
 - (ii) has breached, or failed to observe, the rules of professional conduct or a code of practice applicable to that person, or any other code of practice as the Registrar may by rules specify, or
 - (iii) is otherwise not a fit and proper person to act as a registered image rights agent.

(3) The Registrar may refuse to recognise as agent in respect of any business under the Ordinance any person, individual, partnership or body corporate of a type described in section 101(1) of the Ordinance.

Personality or image consisting of arms

Prohibition on registration of a personality or image consisting of arms.

9. Where it appears to the Registrar that a personality or an image consists of or contains a representation of any arms or insignia as described in section 7(3) of the Ordinance, the Registrar shall refuse to accept an application for

the registration of the personality or the image unless satisfied that the consent of the person entitled to the arms has been obtained.

Prescribed symbol

Prescribed symbol.

10. Without prejudice to section 104(2) of the Ordinance, the use of the symbol set out in the Schedule to these Regulations in relation to a personality or image shall be deemed to be a representation as to registration under the Ordinance unless it is shown that the reference is to registration elsewhere than in the Bailiwick and that the personality or image is in fact so registered.

Interpretation.

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

"annual registration fee" : see regulation 6(1),

"corporate services provider" has the meaning given by section 532(1) of the Companies (Guernsey) Law, 2008^e,

"the Office of Qualifications and Examinations Regulations" means the regulator of qualifications, examinations and assessments in England and vocational qualifications in Northern Ireland,

"the Office of the Registrar" has the meaning given by section 1 of the Office of the Registrar Ordinance,

"the Ordinance": see regulation 1,

^e Order in Council No. VIII of 2008.

"Qualifications and Credit Framework" means the framework for the time being regulated by the Office of Qualifications and Examinations Regulations, or its successor, which sets out the levels against which a qualification can be recognised in England, Wales and Northern Ireland,

"qualifying person" : see regulation 5(5),

"the Register" means the register of image rights agents maintained under regulation 5,

"relevant registration fee" : see regulation 5(5),

and other expressions have the same meanings as in the Ordinance.

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

(3) 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.

Citation and commencement.

12. These Regulations may be cited as the Image Rights (Bailiwick of Guernsey) Regulations, 2012 and shall come into force on the 3rd December, 2012.

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

SCHEDULE

Regulation 10

PRESCRIBED SYMBOL



Dated this 28th day of November, 2012

K.A. STEWART

Minister of the Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a variety of purposes of the Image Rights (Bailiwick of Guernsey) Ordinance, 2012, including the registration of image rights agents.

Regulation 2 amends section 96 of the Ordinance so that an agent authorised by the principal to carry out any procedure relating to a registered personality, the images associated with or registered against a registered personality, or a registered personality's image rights must be done by a registered image rights agent.

Regulation 3 requires that an application for the registration of a personality or image by an agent under sections 11(2)(c) or 11(3)(e) of the Ordinance must be undertaken by a registered image rights agent.

Regulation 4 requires that an application for the registration of a personality by the *personnage*, the personal representative of the *personnage*, or the prospective proprietor, under sections 11(2)(a) or 11(2)(b) of the Ordinance must be made at the Registry in person.

Regulations 5 to 8 provide for the keeping of a register of Guernsey image rights agents.

Regulation 9 prohibits the registration of any personality or image which consists of or contains a representation of any grant of arms by the Crown or insignia as described in section 7(3) of the Ordinance, unless the Registrar is satisfied that the consent of the person entitled to the arms has been obtained.

Regulation 10 clarifies that the use of the "IR" symbol as set out in the Schedule to these Regulations in relation to an image or personality shall be deemed to be a representation as to registration under the Ordinance.

These Regulations come into force on the 3rd day of December, 2012.