

ORDER IN COUNCIL

**XVIII
2010**

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 8th November, 2010.)



2010

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

8th day of November, 2010 before Sir Geoffrey Rowland, Bailiff; present:- Alan Cecil Bisson, Esquire, Barbara Jean Bartie, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Peter Sean Trueman Girard, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 13th October 2010 approving and ratifying a Projet de Loi entitled “The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2010”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:-

1. That the said order in Council be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéschal of Sark for registration on the records of those Islands respectively.



At the Court at Buckingham Palace

THE 13th DAY OF OCTOBER 2010

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 27th January 2010, the States of Deliberation at a meeting on 24th February 2010 approved a *Projet de Loi* entitled the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 21st April 2010 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 14th April 2010 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010, and to order that it shall have force of law in the Bailiwick of Guernsey.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010

THE STATES, in pursuance of their Resolution of the 27th January, 2010^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of Law of 2000.

1. The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^b, as amended, is further amended as follows.

2. For section 13(1) substitute the following -

"(1) The Commission shall cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of

^a Article XVII of Billet d'État No. I of 2010.

^b Order in Council No. I of 2001 amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; Ordinance No. XXXIII of 2003 (the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) and Guernsey Statutory Instrument No. 3 of 2008 (the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

all persons holding fiduciary licences; and the list shall state, in relation to each person mentioned, the category of fiduciary licence held by him."

3. After section 31 insert the following cross-heading and sections -

"Making of Rules

Rules of the Commission.

31A. The Commission may make rules in relation to the carrying on of regulated activities by licensed fiduciaries and generally as to the manner in which licensed fiduciaries conduct, or hold themselves out as conducting, their business.

Particular matters that may be covered by rules.

31B. Rules under section 31A may, without limitation -

- (a) set out general conditions applicable to licensed fiduciaries (and accordingly make provision for matters in respect of which conditions may be imposed under section 9),
- (b) prescribe the manner in which licensed fiduciaries 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),

- (c) prohibit licensed fiduciaries from carrying on, or holding themselves out as carrying on, regulated activities –
 - (i) of any specified class or description,
 - (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
 - (iii) in relation to persons of a specified class or description or persons other than those of a specified class or description,
- (d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensed fiduciaries of any discretionary powers afforded to them by clients,
- (e) require licensed fiduciaries to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any regulated activity, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed fiduciaries and their servants and agents and,

without limitation, require licensed fiduciaries to impose and enforce restrictions on the activities carried on by their servants and agents,

(g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of regulated activities,

(h) require specified information to be given in the form and manner and at the time specified by or under the rules -

(i) to the Commission,

(ii) to the public, or

(iii) to any prescribed class or description of persons,

(i) require licensed fiduciaries to make provision for the protection of clients in the event of the cessation of any business or any class or description of business carried on by them,

(j) impose requirements as to the places and manner in which, and the times during which, fiduciary licences are to be displayed or available for inspection by the public,

- (k) make provision as to the settlement of disputes,
- (l) require the public disclosure by licensed fiduciaries of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation -
 - (i) information on the financial position and financial performance of licensed fiduciaries,
 - (ii) information on the basis, methods and assumptions on which any information is prepared,
 - (iii) information on risk exposures and the management thereof, and
 - (iv) information on management and corporate governance, and
- (m) make provision as to the dealings and relationship of licensed fiduciaries with other licensed fiduciaries, other persons carrying on regulated activities, clients and the Commission.

General provisions as to rules

Making, publication and effect of contravention of rules.

31C. (1) Before making any rules under this Part of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or potential clients, publish proposals for the rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.

(2) Rules under this Part of this Law shall be made by an instrument in writing which shall –

- (a) specify the provisions of this Law under which the rules are made, and
- (b) be made available to the public in such manner, and on such terms as to payment or otherwise, as the Commission considers appropriate.

(3) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a rule under section 31A does not of itself render him liable to any proceedings, but –

- (a) the Commission, in the exercise of its powers conferred by or under –
 - (i) this Law or any Ordinance, regulation

or rule made under it, or

(ii) the regulatory Laws,

may take the rule and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings (criminal or otherwise), whether or not under this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question."

Citation.

4. This Law may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010.

S.M.D. ROSS,
Her Majesty's Deputy Greffier.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

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