

PROJET DE LOI

ENTITLED

The Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXII, p. 28; as amended by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1970 (Ordres en Conseil Vol. XXII, p. 518); the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977 (Ordres en Conseil Vol. XXVI, p. 225); the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1983 (Ordres en Conseil Vol. XXVIII, p. 171); the Insurance Business (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 214); the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (Ordres en Conseil Vol. XXX, p. 243); the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Administration of Justice (Bailiwick of Guernsey) Law, 1991 (No. I of 1991, Ordres en Conseil Vol. XXXIII, p. 49); the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (No. XIII of 1994, Ordres en Conseil Vol. XXV(1), p. 271); the Protection of Depositors, Companies and Prevention of Fraud (Amendment) Ordinance, 1970 (Recueil d'Ordonnances Tome XVI, p. 500); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Government of Alderney Law, 2004 (No. III of 2005).

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ARRANGEMENT OF SECTIONS

PART I

...

1. ...
2. ...
- 2A. ...
3. ...
4. ...

PART II

Control of the carrying on of certain businesses

5. States power to make provision for control of certain businesses.
6. ...
- 6A. ...
- 6B. Penalties to be prescribed by Ordinance.
7. Interpretation of Part II.

PART III

Control of the use of certain words in the title of companies and other businesses

8. Prohibition on use of certain words in name of businesses.
9. Registration of companies with certain words in name.
10. Change of name of existing companies.
11. Application to Commission to use certain words in name of company.
12. Grant or refusal of permission by Commission.
13. Offence.
14. Interpretation of Part III.

PART IV

Interpretation, citation and commencement

15. Interpretation.
- 15A. Regulations.
16. Citation.
17. Commencement.

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THE STATES, in pursuance of their Resolution of the twenty-sixth day of June, nineteen hundred and sixty-eight, 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.

PART I

Protection of Depositors

States power to control investment companies.

1. ...

NOTES

Part I, and section 1 thereof, were repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(a), with effect from 1st October, 1994.¹

The following case has referred to this Law:

States of Guernsey v. Firth (1981) (Unreported, Court of Appeal, 5th March and 14th May) (Court of Appeal Judgments, 1964-89, p. 217).

Fraudulent inducement to invest on deposit.

2. ...

NOTE

Section 2 was repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(a), with effect from 1st October, 1994.

[Search warrants.

2A. ...]

NOTE

Section 2A (which was previously inserted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 8, with effect from 28th May, 1991) was repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(a), with effect from 1st October, 1994.

Penalties to be prescribed by Ordinance.

3. ...

NOTE

Section 3 was repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(a), with effect from 1st October, 1994.

Interpretation of Part I.

4. ...

NOTE

Section 4 was repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(a), with effect from 1st October, 1994.²

PART II

Control of the carrying on of certain businesses [...]

States power to make provision for control of certain businesses.

5. The States shall have the like power of making provision by Ordinance for regulating or prohibiting the carrying on [by any person] of the business of trustee or the business of executor or administrator [...] as they have for making provision in pursuance of the provisions of section one of this Law for regulating or prohibiting the business of accepting money for the purpose of investment on deposit, with such exceptions, adaptations and modifications as may be specified in any such Ordinance.

NOTES

In the Heading to Part II, the words omitted in square brackets were repealed by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(b), with effect from 3rd October, 1977.

In section 5,

the words in the first pair of square brackets were substituted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(c)(i), with effect from 3rd October, 1977;

the words omitted in the second pair of square brackets were repealed by the Insurance Business (Guernsey) Law, 1986, section 67, Schedule 6, with effect from 31st December, 1986.³

Class of insurance business to which this Part applies.

6. ...

NOTE

Section 6 was repealed by the Insurance Business (Guernsey) Law, 1986, section 67, Schedule 6, with effect from 31st December, 1986.

[Misleading statements etc. inducing persons to enter into contracts of insurance.

6A. ...]

NOTE

Section 6A (which was originally inserted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(d), with effect from 3rd October, 1977) was repealed by the Insurance Business (Guernsey) Law, 1986, section 67, Schedule 6, with effect from 31st December, 1986.

[Penalties to be prescribed by Ordinance.

6B. The States may, from time to time, by Ordinance prescribe the penalties which shall be incurred by any person guilty of an offence under any

Ordinance made in pursuance of the provisions of section five of this Law, and different penalties may be so prescribed for different offences.]

NOTE

Section 6B was inserted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(d), with effect from 3rd October, 1977.

Interpretation of Part II.

7. In this Part of this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

[...]

"the business of executor or administrator" means the business of acting as executor or administrator,

"the business of trustee" means the business of **acting** as a trustee,

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...].

NOTE

In section 7, the words omitted in square brackets were repealed by the Insurance Business (Guernsey) Law, 1986, section 67, Schedule 6, with effect from 31st December, 1986.

PART III

Control of the use of certain words in the title of companies and other businesses

Prohibition on use of certain words in name of businesses.

8. Subject to the succeeding provisions of this Part of this Law, a person shall not, on and after the coming into force of this Part of this Law, use or continue to use any of the words [...], [...], [...], "insurance" or "assurance" or any cognate expression, whether in the English language or in any other language, in the name, description or title under which that person carries on business.

NOTE

In section 8, the words omitted in square brackets were repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 59(3), with effect from 1st October, 1994.

Registration of companies with certain words in name.

9. Upon an application being made to –
- (a) the Royal Court in pursuance of the provisions of the Company Law of Guernsey,
 - (b) the Court of Alderney in pursuance of the provisions of the Company Law of Alderney,

for the registration of a company in the proposed name of which there appears any of the words [...], [...], [...], "insurance" or "assurance" or any cognate expression, whether in the English language or in any other language, the Royal Court or the Court of Alderney, as the case may be, shall not grant the application unless it is satisfied that the applicants therefor have first obtained the permission of [the

Commission] to the use of the word concerned in the name of the company in pursuance of the provisions of section twelve of this Law.

NOTES

In section 9,

the words omitted in the first three pairs of square brackets were repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 59(3), with effect from 1st October, 1994;

the words in the fourth pair of square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 9, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

The Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1936 ("the Company Law of Guernsey") has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1894 ("the Company Law of Alderney") has since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

Change of name of existing companies.

10. (1) A company which, on the date of the coming into force of this Part of this Law, is registered –

- (a) in pursuance of the provisions of the Company Law of Guernsey,
- (b) in pursuance of the provisions of the Company Law of Alderney,

and which has in its name any of the words [...], [...], [...], "insurance" or "assurance" or any cognate expression, whether in the English language or in any other language, shall, before the expiration of the period of [eight months] commencing on the date of the coming into force of this Part of this Law [or such shorter period commencing on the said date as the States may by Ordinance prescribe], apply to the Royal Court or the Court of Alderney, as the case may be, to have its name changed to one which does not contain any such word or such expression as aforesaid unless before the expiration of such period as aforesaid the company has obtained the permission of the Committee to retain the use of the word or expression concerned in its name in pursuance of the provisions of section twelve of this Law.

(2) If any company which is required to make an application to the Royal Court or the Court of Alderney in pursuance of the provisions of the last preceding subsection fails to make such application before the expiration of such period as aforesaid, Her Majesty's Greffier or the Clerk of the Court of Alderney, as the case may be, shall treat the company as a company which is not carrying on business or in operation and the provisions of the Company Law of Guernsey of 1936 or the Company Law of Alderney of 1962, as the case may be, shall apply accordingly [subject to the modification that the period mentioned in any notice sent by Her Majesty's Greffier in pursuance of the provisions of subsection (3) of section three of the said Law of 1936, or in any notice sent by the Clerk of the Court of Alderney in pursuance of the provisions of subsection (3) of section fifteen of the said Law of 1962, shall, for the purposes of this Part of this Law, be one month].

NOTES

In section 10,

the words omitted in the first three pairs of square brackets in subsection (1) were repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 59(3), with effect from 1st October, 1994;

the words in the fourth pair of square brackets in subsection (1) were substituted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) Ordinance, 1970, section 1, with effect from 25th November, 1970;

the words in the fifth pair of square brackets in subsection (1) were

inserted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1970, section 1(a), with effect from 27th October, 1970;

the words in square brackets in subsection (2) were inserted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1970, section 1(b), with effect from 27th October, 1970.

The following Ordinance has been made under section 10:

Protection of Depositors, Companies and Prevention of Fraud (Amendment) Ordinance, 1970.

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e)(ii), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court, including the functions of Registrar under the Companies (Alderney) Law, 1994.

The Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou a Responsabilité Limitée, 1936 ("the Company Law of Guernsey of 1936") has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Companies (Alderney) Law, 1962 ("the Company Law of Alderney of 1962") has since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

Application to [Commission] to use certain words in name of company.

11. (1) Any person desirous of obtaining the permission of [the Commission] for the purposes of this Part of this Law shall make application in that behalf to [the Commission] and such application shall be in such form and accompanied by such information as [the Commission] may, from time to time, require[, and by such fee as the States [Policy & Resources Committee] may from time to time prescribe by regulations made under this section].

(2) Upon receipt of an application under the provisions of the last preceding subsection or at any time thereafter, [the Commission] may require an applicant to supply such further information as [the Commission] may consider necessary or desirable.

NOTES

In section 11,

the words "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 9, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the fourth pair of square brackets in subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 12, with effect from 1st February, 1988;

the words in square brackets within the fourth pair of square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.⁴

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁵

Grant or refusal of permission by [Commission].

12. (1) [...], upon receipt of an application under the provisions of the last preceding section [the Commission] may either –

- (a) grant the permission applied for,
- (b) refuse such permission, or
- (c) grant such permission subject to such conditions as [the Commission] may think it necessary or expedient to impose.

(2) ...

NOTES

In section 12,

subsection (2), and the words omitted in the first pair of square brackets in subsection (1), were repealed by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1983, respectively section 1(b) and section 1(a), with effect from 14th June, 1983;

the words "Commission" and "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 9, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

Offence.

13. Any person who contravenes the provisions of section eight of this Law shall be guilty of an offence and liable, on conviction, to a fine not exceeding [level 4 on the uniform scale] or where the offence consists of continuing any such contravention after conviction thereof, twenty-five pounds for each day on which it is so continued.

NOTE

In section 13, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Interpretation of Part III.

14. In this Part of this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the Company Law of Alderney" means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the records of the Island of Guernsey on the twenty-second day of May, eighteen hundred and ninety-four,

"the Company Law of Alderney of 1962" means the Companies (Amendment) (Alderney) Law, 1962,

"the Company Law of Guernsey" means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the records of the Island of Guernsey on the twenty-first day of March, nineteen hundred and eight,

"the Company Law of Guernsey of 1936" means the Law entitled "Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the records of the Island of Guernsey on the twenty-first day of March, nineteen hundred and thirty-six.

NOTE

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1894 and the Companies (Amendment) (Alderney) Law, 1962 have both since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1908 and the Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1936 have both since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

PART IV

Interpretation, citation and commencement

Interpretation.

15. (1) In this Law the expression **"the States"** means the States of Guernsey.

(2) Except so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

(3) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law throughout the Bailiwick of Guernsey.

Regulations.

15A. Regulations made under any power conferred by or under this Law shall be laid before a meeting of the States as soon as may be after the regulations are made; and if, at that meeting or at the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.]

NOTE

Section 15A was inserted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 13, with effect from 1st February, 1988.

Citation.

16. This Law may be cited as the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969.

Commencement.

17. This Law shall come into force on such day as the States may by Ordinance appoint and different days may be so appointed for the coming into force of different Parts of this Law.

NOTES

Part I of the Law was brought into force on 29th September, 1971 by the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969 (Commencement) Ordinance, 1971, section 1.

Part III and Part IV of the Law were brought into force on 27th May, 1970

by the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969 (Commencement) Ordinance, 1970, section 1.

¹ Section 1 was previously amended by: the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(a), with effect from 3rd October, 1977; the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraphs 8, 9 and 10, with effect from 1st February, 1988.

² Section 4 was previously amended by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 11, with effect from 1st February, 1988.

³ Part of these words omitted was previously inserted by the Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977, section 1(c)(ii), with effect from 26th July, 1977.

⁴ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

⁵ The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.