

PROJET DE LOI

ENTITLED

The Banking Supervision (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 1994.

1. The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended^b, 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 all institutions holding banking licences."

3. After section 33 insert the following cross-heading and sections -

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

^b Ordres en Conseil XXXV(1), p.271; amended by No's. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; and No. IV of 2009; and Recueil d'Ordonnances Tome XXIX, p. 406 and Guernsey Statutory Instruments No. 3 of 2000 and No. 1 of 2008.

"Making of Rules

Rules of the Commission.

33A. The Commission may make rules in relation to the carrying on of deposit-taking business by licensed institutions and generally as to the manner in which licensed institutions conduct, or hold themselves out as conducting, their business.

Particular matters that may be covered by rules.

33B. Rules under section 33A may, without limitation -

- (a) set out general conditions applicable to licensed institutions (and accordingly make provision for matters in respect of which conditions may be imposed under section 9),
- (b) prescribe the manner in which licensed institutions 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 depositor assets, financial resources, the calculation of technical provisions and capital requirements),
- (c) prohibit licensed institutions from carrying on, or holding themselves out as carrying on, deposit-taking business –
 - (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 institutions of any discretionary powers afforded to them by depositors or customers,
- (e) require licensed institutions to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of deposit-taking business, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed institutions and their servants and agents and, without limitation, require licensed institutions 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 deposit-taking business,
- (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 institutions to make provision for the protection of depositors and customers 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, banking 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

institutions 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 institutions,
 - (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 institutions with other licensed institutions, other persons carrying on deposit-taking business, depositors, customers and the Commission.

General provisions as to Rules

Making, publication and effect of contravention of rules.

33C. (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 depositors or customers or potential depositors or customers, 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 33A 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."

4. In section 60(1)(c) the words "or rule", wherever appearing, are repealed.

Citation.

5. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010.