

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.