

Island of Guernsey

Ordinance of the States **XXVII** 1985

Made 31st July, 1985.
Coming into Operation ... 1st August, 1985.

The Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1985

THE STATES, in pursuance of their Resolution of the 12th day of June, 1985, and in exercise of the powers conferred upon them by sections 1 and 3 of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969, as amended^(a), hereby order:—

1. The Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971, as amended^(b) (hereinafter referred to as “the principal Ordinance”), is hereby further amended as follows—

- (a) section 1 (2) is repealed;
- (b) immediately after section 1 there are inserted the following two sections:

^(a) Ordres en Conseil Vol. XXII, pp. 28 and 518; Vol. XXVI, p. 225; No. V of 1983.

^(b) Recueil d'Ordonnances Tome XVII, p. 225; Tome XVIII, pp. 24 and 55; No. XXXV of 1980.

“Restriction
on
advertising
for
deposits.

1A. A person shall not cause or permit there to appear in the Bailiwick any advertisement soliciting deposits on behalf of a person who is not registered under section four of this Ordinance, or indicating that a person not so registered is willing to accept deposits, unless that advertisement is issued with, and in accordance with the terms of, the permission in writing of the Committee.

Exceptions.

1B. Nothing in section one or section 1A of this Ordinance shall be taken to regulate or prohibit the doing of anything by or on behalf of:

- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
- (b) the National Savings Bank within the meaning of the Post Office Act 1969;
- (c) any savings bank certified under the Trustee Savings Bank Act 1863, the Trustee Savings Bank Act 1954, the Trustee Savings Bank Act 1969 or the Trustee Savings Bank Act 1981;
- (d) the United Kingdom Post Office.”;

- (c) Section 5 is renumbered as section 5(1) and the following subsection is inserted immediately thereafter:

“(2) It is hereby declared for the avoidance of doubt—

- (a) that a requirement to furnish information such as is mentioned in paragraph (a) of subsection (1) of this section may be a requirement to furnish the information on a particular occasion or from time to time at specified intervals or on specified occasions, and may be imposed on a particular applicant or registered person, on all applicants or registered persons or on any class of applicants or registered persons;
- (b) that a direction as to the manner in which such information is to be verified may direct its annexation to any accounts to be sent to the Committee in accordance with section six of this Ordinance and, in the case of information to be annexed to audited accounts, that it be reported upon by the auditor in such manner as the Committee may specify.”;
- (d) section 6 is repealed and the following section is substituted therefor:

“General conditions on registration.

6(1) Subject to subsection (2) of this section, the registration of any person under the provisions of section four of this Ordinance shall, without prejudice to any conditions which might be

attached to any individual registration under the provisions of the said section four, be subject to the following general conditions:

- (a) audited accounts of the company containing the information set out in the Second Schedule to this Ordinance shall be drawn up to dates at intervals not exceeding fifteen months;
- (b) not later than three months after each date to which audited accounts are drawn up—
 - (i) a copy thereof shall be delivered to the Committee;
 - (ii) abridged accounts in such form and containing such information as the Committee may in any particular case approve shall be available to every depositor and to every shareholder;
- (c) if the interval between the dates to which successive audited accounts of the company are drawn up exceeds six months, unaudited accounts of the company, containing the information

set out in the Second Schedule to this Ordinance, shall be drawn up to a date six months after the date of the last audited accounts;

- (d) not later than two months after each date to which any such unaudited accounts are drawn up—
 - (i) a copy thereof shall be delivered to the Committee; and
 - (ii) abridged accounts in such form and containing such information as the Committee may in any particular case approve shall be available to every depositor and to every shareholder;
- (e) copies of the latest abridged audited accounts and of the latest abridged unaudited accounts of the company shall be available to every person making enquiries with a view to becoming a depositor or a shareholder;
- (f) the auditor's report on the accounts mentioned in paragraph (a) of this subsection shall be in accordance with the provisions of the Third Schedule to this Ordinance;

(g) any advertisement soliciting deposits or indicating that the company is willing to receive deposits shall comply with the provisions of the Fourth Schedule to this Ordinance.

(2) The registration under the provisions of section four of this Ordinance of a body corporate incorporated under the laws of any country outside the Bailiwick which carries on the business of accepting money for investment on deposit in the country in which it is incorporated shall, without prejudice to any conditions which might be attached to any individual registration under the provisions of the said section four, be subject to the following general conditions in place of the conditions set out in subsection (1) of this section:

(a) not later than three months after the date to which any audited accounts of the body corporate are drawn up—

(i) a copy thereof shall be delivered to the Committee; and

(ii) those accounts shall be made available during normal banking hours

for inspection by any person on request at each place in the Bailiwick at which the body corporate holds itself out as accepting deposits;

(b) the body corporate shall deliver to the Committee such accounting and other information relating to the business carried on in the Bailiwick by the body corporate as the Committee may in any particular case from time to time reasonably require;

(c) any advertisement soliciting deposits or indicating that the body corporate is willing to receive deposits shall comply with the provisions of the Fourth Schedule to this Ordinance.”;

(e) in section 12(2), for the full stop at the end of paragraph (b) there is substituted a semi-colon and immediately thereafter there is inserted the following additional paragraph:

“(c) except when he is required by or under paragraph (a) or paragraph (b) of this subsection to deliver his current registration certificate, cause that certificate to be displayed at all times at his main place of business in the Bailiwick in a conspicuous place in

that part of the premises to which the public has access during normal banking hours.”;

- (f) in section 12(3), for all the words after “ to a fine not exceeding ” there is substituted “ two hundred and fifty pounds ”;
- (g) section 13 is repealed and the following section is substituted therefor :

“ Publica-
tion of
information
concerning
persons
registered
etc.

13.(1) The Committee shall during the month of January in each year cause to be published in *La Gazette Officielle* the names of the persons registered on the first day of January in that year under the provisions of section four of this Ordinance.

(2) The Committee shall within the fourteen days next following the making by it of any decision either :

- (a) to register a person for the first time under the provisions of section four of this Ordinance; or
- (b) to refuse to renew the registration of a registered person under the provisions of section eight of this Ordinance; or
- (c) to cancel the registration of a registered person under the provisions of section five of this Ordinance,

cause to be published in *La Gazette Officielle* a notice of that decision.

(3) Nothing in this section shall be construed as requiring the Committee to publish reasons for any such decision as is referred to in subsection (2) of this section or to indicate whether or not the registration of any person is subject to any condition imposed under section four of this Ordinance.”;

- (h) in paragraph (a) of section 16, immediately after the words “section one” there is inserted “, section 1A”;
- (i) section 18 is repealed and the following section is substituted therefor:

“General provisions as to offences.

18.(1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of subsection (1) of this section, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

(3) In any proceedings for an offence under this Ordinance it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.”;

(j) Section 19 is repealed;

(k) in section 21(1),—

(i) immediately before the definition of “auditor” there is inserted the following definition:

““advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films, or by way of sound broadcasting or television, but does not include an advertisement issued outside the Bailiwick by or on behalf of a person to whom subsection (1) of section six of this Ordinance does not apply if its appearance in the Bailiwick is incidental to its appearance elsewhere;”;

“(ii) for the definition of “ auditor ” there is substituted:

“ “ auditor ” means a person who is a member of either the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland or the Chartered Association of Certified Accountants, and a person who is for the time being authorised by the Committee to audit the accounts of registered persons as having similar qualifications obtained outside the United Kingdom;”;

(l) in the Second Schedule,—

(i) in the paragraph immediately preceding paragraph 1, the words “ and the accounts of companies to be submitted to the Committee under the provisions of subsection (2) of the said section six ” are repealed;

“(ii) for the full stop at the end of paragraph 1(e) there is substituted a comma, and immediately thereafter there is inserted “ and any reference to a director or to an officer of the company includes a reference to a director, or, as the case may be to an officer of:

(i) any subsidiary of the company;

(ii) any holding company of the company;

(iii) any subsidiary of any such holding company.”;

(iii) in paragraph 20, for the words "Where at the end of a period in respect of which accounts are submitted in support of an application for registration by a company and the company" there is substituted "Where a company submitting accounts for the purposes of this Ordinance";

(m) in paragraph 1 of the Third Schedule, the words and commas ", or on the accounts to be delivered to the Committee under the provisions of subsection (2) of the said section six," are repealed and in paragraph 3 of that Schedule, for "subsection (2)" there is substituted "subsection (1)";

(n) in paragraph 2 of the Fourth Schedule, for the full stop at the end of sub-paragraph (c) there is substituted a semi-colon and immediately thereafter there is inserted the following additional paragraph:

"(d) that the business is the business of a person registered under the provisions of this Ordinance."

Construction.

2. (1) This Ordinance shall be construed as one with the principal Ordinance.

(2) Unless the context otherwise requires, a reference in this Ordinance to a numbered provision is a reference to the provision so numbered in the principal Ordinance.

Transitional provisions.

3. In the case of a person registered under section 4 of the principal Ordinance on 1st August 1985—

(a) section 6 of the principal Ordinance shall continue to apply in relation to any accounts of

that person drawn up to a date before 1st August 1985 as if this Ordinance had not been passed;

- (b) the last date up to which that person's first audited and unaudited accounts after 31st July 1985 are permitted to be drawn shall be calculated, unless in any particular case the Committee otherwise agrees in writing, as if this Ordinance had been in force on the date to which that person's last audited accounts before 1st August 1985 were drawn up.

4. The Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1980 is repealed. Repeal.

5. This Ordinance may be cited as the Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1985. Citation.

6. This Ordinance and the Protection of Depositors (Bailiwick of Guernsey) Ordinances, 1971 and 1972 may be cited together as the Protection of Depositors (Bailiwick of Guernsey) Ordinances, 1971 to 1985. Collective title.

7. This Ordinance shall come into force on the 1st day of August 1985. Commencement.

K. H. TOUGH,
Her Majesty's Greffier.