

Island of



Guernsey

## Ordinance of the States

**XXX**  
**2014**

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Coming into Operation ..... 24th September, 2014

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### **The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) (Amendment) Ordinance, 2014**



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**THE STATES**, in pursuance of their Resolutions of the 26<sup>th</sup> November, 2008<sup>a</sup> and the 25<sup>th</sup> November, 2010<sup>b</sup>, and in exercise of the powers conferred on them by sections 46 and 60 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>c</sup>, hereby order:—

### **Amendments.**

1. The following amendments are made to the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008<sup>d</sup> -

- (a) in the arrangement of sections -
  - (i) in the entry for section 32, for "regulations", substitute "subordinate legislation", and
  - (ii) in the entry for Schedule 4, delete the word "not",
- (b) in section 3, for subsection (7) substitute the following subsection -

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<sup>a</sup> Billet d'État No. XIX of 2008.

<sup>b</sup> Article XII of Billet d'État No. XXIII of 2010.

<sup>c</sup> Ordres en Conseil Vol. XXXV, p. 271; amended by Ordres en Conseil Vol. XLIII(1) p. 462; Vol. XLII(2), pp. 644 and 766; Order in Council No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; and G.S.I. No. 1 of 2008; No's. 35 and 83 of 2010.

<sup>d</sup> Recueil d'Ordonnances Tome XXXIII, p. 238.

"(7) The Board shall act with a quorum of 2 members, one of whom must be -

- (a) the Chairman, or
- (b) the Deputy Chairman, who shall be a member of the Board nominated by the Chairman to act as the Deputy Chairman either generally or for the purpose of a specified meeting or meetings (and if the Chairman has made no such appointment and is absent or indisposed then the Deputy Chairman may be appointed for the purposes of a particular meeting by a resolution of that meeting).",
- (c) in section 5(1) -
  - (i) for the first reference to "member of the Board", substitute "member of, employee, servant or agent of the Board",
  - (ii) for the second reference to "member of the Board", substitute "member of, or for or on behalf of, the Board",
  - (iii) in paragraph (b), delete "or" where it appears at the end of the paragraph,
  - (iv) in item (i) of paragraph (c) for "member of the

Board", substitute "member of, or for or on behalf of, the Board",

(v) in item (iii) of paragraph (c), for the words "order of a court." substitute "order of court, or", and

(vi) immediately after paragraph (c), insert the following paragraph -

"(d) where the disclosure is made to the Commission.",

(d) in section 5(2), for "subsection (1)(a) or (c)(i) or (ii)", substitute "subsection (1)(a), (c)(i), (c)(ii) or (d)",

(e) in section 7, for paragraph (a) of subsection (2) substitute the following paragraph -

"(a) the costs, fees or expenses incurred by the Board in or in connection with performing its functions under the Ordinance, including the expenses of the members of the Board",

(f) in section 8 -

(i) in subsection (1), immediately after paragraph (a), insert the following paragraph -

"(ab) where the Board has recovered any amount as

described in section 14(4)(b) or (5)(b), such amount to the extent that it has not been used to pay compensation in respect of those previous defaults,"

- (ii) in subsection (2)(a), immediately after "claimants," insert "including any amount as described in section 14(4)(b) or (5)(b),",
- (iii) in subsection (2)(d), for "participants under section 23(4), and", substitute "qualifying claimants under section 23(4),",
- (iv) in subsection (2)(e), for the words "qualifying claimants under section 23(5).", substitute "participants under section 23(5), and", and
- (v) immediately after subsection (2)(e), insert the following paragraph -
  - "(f) any costs, fees and expenses incurred by the Board -
    - (i) in or in connection with the processing of claims, and
    - (ii) generally in connection with the declaration of default in question.",
- (g) in section 9(3), immediately after "audit its", insert

"own",

(h) in section 12 -

(i) for subsection (4), substitute the following subsection -

"(4) Where a deposit of monies is made by -

(a) the trustee for the purposes of a retirement annuity trust scheme,

(b) a parent for the benefit of his child, or

(c) an administrator or executor of the estate of a deceased person where the deposit represents the proceeds of that estate (or part thereof),

then the trustee, parent, administrator or executor (as the case may be) shall be treated as a qualifying claimant on behalf of the scheme, child or estate (as the case may be) and the deposit shall be treated as a qualifying deposit for which compensation may be paid to the trustee, parent, administrator or executor (as the case may be) in addition to that payable in respect of any other deposit which may be held in the name of the trustee, parent, administrator or executor in any other capacity.",

(ii) immediately after section 12(4), insert the following subsection –

"(4A) Where -

- (a) in the case of a retirement annuity trust scheme, more than one trustee has made a deposit for the purposes of the scheme,
- (b) in the case of a child, more than one parent has made a deposit for the benefit of that child, or
- (c) in the case of a deceased person's estate, more than one administrator or executor, or an administrator and an executor, has made a deposit representing the proceeds of that estate (or part thereof),

only one trustee, parent, executor or administrator (as the case may be) shall be treated as the qualifying claimant for the purposes of subsection (4).",

- (iii) delete subsection (6),
- (iv) in subsection (7)(b) for "in respect of the deposit," substitute "in respect of the deposit, or",
- (v) in subsection (7)(c) for "participant in default, or", substitute "participant in default.",
- (vi) delete subsection (7)(d), and
- (vii) immediately after subsection (7), insert the following subsection -

"(7A) The total amount of any qualifying deposits held by a qualifying claimant with a participant shall be reduced for the purposes of subsection (2) by the lesser of -

- (a) the outstanding balance on the date of default on any loan or other credit facility for which the claimant is liable to the participant and which is secured by a relevant security over any such deposits, and
- (b) the value of the deposits subject to the relevant security,

and where there is any dispute as to any reduction which may apply under this subsection, the Board's decision shall be final.",

(i) in section 14 -

- (i) immediately after subsection (1), insert the following subsection -

"(1A) A 5 year period mentioned in subsection (1) shall only commence when -

- (a) a declaration of default is made, and
- (b) any previous 5 year period has expired", and

- (ii) immediately after subsection (2), insert the following subsections -

"(3) Where more than one declaration of default is made in a 5 year period and the second declaration of default is made within 14 days of the first declaration of default then -

- (a) the payment of compensation in respect of the first declaration of default shall be suspended,
- (b) the total liability of the Scheme to pay compensation shall be calculated by reference to the compensation payable to qualifying claimants in respect of both declarations of default, and
- (c) if the total amount of compensation payable to qualifying claimants in respect of both declarations of default exceeds £100,000,000, the compensation shall be apportioned *pari passu*.

(3A) Where a third or subsequent declaration of default is made in a 5 year period within 14 days of the first or second declaration of default then -

- (a) the payment of compensation by the Board shall be suspended, and

- (b) the Board shall request the Department to suspend the operation of the Scheme in accordance with subsection (3B).

(3B) Where the Board has made a request under subsection (3A)(b), the Department may suspend the Scheme by order for such period and on such conditions as it sees fit.

(4) Where more than one declaration of default is made in a 5 year period and the second declaration of default is not made within 14 days of the first declaration of default then the total amount available for the payment of compensation to qualifying claimants in relation to that second or any subsequent declaration of default shall be the sum of -

- (a) the residual amount of the total liability of the Scheme remaining after the payment of compensation to qualifying claimants of previous declarations of default in the 5 year period, and
- (b) any amount recovered by the Board as at the date of the declaration of default by reason of its right of subrogation under section 23 in respect of such previous declarations of default in the 5 year period to the extent it has not been used to pay compensation in respect of those previous defaults.

(5) Where a third or subsequent declaration of default is made in a 5 year period otherwise than in accordance with subsection (3A),

then the total amount available for the payment of compensation to qualifying claimants in relation to each such declaration shall be the sum of -

(a) the residual amount of the total liability of the Scheme remaining after the payment of compensation to qualifying claimants of previous declarations of default in the 5 year period, and

(b) any amount recovered by the Board as at the date of the declaration of default by reason of its right of subrogation under section 23 in respect of such declarations of default to the extent it has not been used to pay compensation in respect of those previous defaults.",

(j) for section 15(2), substitute the following subsection -

"(2) Where the Board is satisfied on reasonable grounds that -

(a) compensation is payable under this section to a qualifying claimant, but

(b) immediate payment in full would not be prudent, having regard to the quantum of any claims for compensation which may be made on the Scheme (whether as a result of this or any other declaration of default),

it may make an interim payment to the qualifying claimant of a portion of the compensation payable, the amount of which shall be determined in the absolute discretion of the Board.",

(k) in section 15(3), delete the words "in each subsequent calendar year",

(l) immediately after section 15(3), insert the following subsections -

"(4) Where the Commission makes a declaration of default, the Board shall within 7 days of that declaration make a public statement relating to that default containing, in so far as the Board is able to provide it, the following information -

(a) the extent to which any compensation payable is limited by the operation of any provision of section 14, and

(b) whether it intends to pay compensation to qualifying claimants in full or in portions.

(5) Nothing in this section shall prevent the Board from suspending the payment of compensation to qualifying claimants where, in the absolute discretion of the Board, it considers that it is prudent to do so.",

(m) in section 17 -

- (i) in subsection (1), immediately after "the Board may", insert "in any calendar year",
- (ii) immediately after subsection (1), insert the following subsection -

"(1A) If in any calendar year a person is granted a banking licence and accordingly becomes a participant in the Scheme in accordance with section 2, the Board may for the avoidance of doubt impose an insurance levy on that person in respect of that year.",

- (iii) in subsection (2), for "each participant in respect of an insurance levy", substitute "each participant to contribute to an insurance levy",
- (iv) immediately after subsection (2), insert the following subsections -

"(2A) Where the Board imposes an insurance levy, it shall (without prejudice to the provisions of any regulations under subsection (2)) give written notice to each participant liable to contribute stating -

- (a) the amount of the participant's contribution,
- (b) the method by which it is calculated, and
- (c) the date on which it is due (which may not be earlier than 14 days after the date of the notice).

(2B) An insurance levy is payable on or before the due date stated in the notice.", and

- (v) in subsection (5), immediately after the words "the Commission", insert the words ", except with the consent of the participant in question",
- (n) in section 18 -

- (i) in subsection (2), for "each participant to a compensation levy in respect of a default shall be calculated" substitute "each participant to contribute to a compensation levy shall be determined by the Board",
- (ii) for subsection (4), substitute the following subsection -

"(4) The Board may not require a participant to pay in any calendar year an aggregate amount by way of a contribution to a compensation levy which would exceed the lesser of -

- (a) a total of £1,000,000, or
- (b) 50% of the participant's average profits over the 3 years preceding that year:

provided that the element of the compensation levy payable under paragraph (a) of Schedule 2

shall not be subject to such limitation and shall accordingly be disregarded in calculating the maximum aggregate amount payable by virtue of this subsection.",

- (iii) for subsection (5), substitute the following subsection -

"(5) Where the amount raised by a compensation levy is not sufficient to meet the claims of qualifying claimants, the Board may impose a further compensation levy on all other participants for the purpose of raising the outstanding money, subject to the limitations set out in subsection (4).",

- (iv) for subsection (7), substitute the following subsection -

"(7) Where the Board imposes a compensation levy, it shall give written notice to each participant liable to contribute stating -

- (a) the amount of -
  - (i) the elements of the participant's contribution calculated under paragraph (a) and (b) of Schedule 2, and
  - (ii) the participant's contribution in total,
- (b) the method by which the contribution is calculated, and

(c) the date on which the element of the contribution calculated under -

(i) paragraph (a) of Schedule 2 is due (which may not be later than 14 days after the date of the notice), and

(ii) paragraph (b) of Schedule 2 is due (which may not be earlier than 14 days after the date of the notice).",

(v) immediately after subsection (7), insert the following subsection -

"(7A) A contribution to a compensation levy is payable on or before the due date stated in the notice.", and

(vi) in subsection (9) -

(A) for the words "Where a compensation levy or any part thereof is not paid by the date imposed by the Board", substitute "Where a contribution to a compensation levy or any part thereof is not paid by the due date stated on the notice", and

(B) immediately after "until the date of payment", insert "and for the avoidance

of doubt, the liability of any participant to pay a compensation levy is not reduced by the operation of limits imposed by subsection (4) and, notwithstanding those limits, interest shall accrue on any unpaid balance",

- (o) in section 19 for paragraphs (b) and (c), substitute the following paragraphs -

"(b) its contribution to a compensation levy, or

(c) its contribution to an insurance levy,"

- (p) in section 23 -

(i) for subsection (4), substitute the following subsection -

"(4) Where -

(a) compensation has been paid to a qualifying claimant, and

(b) the Board has received any amount by reason of its right of subrogation under this section,

the Board shall repay to each qualifying claimant any amount received by it in respect of the qualifying claimant's deposit which exceeds the amount of compensation paid in respect of the deposit.",

- (ii) for subsection (5), substitute the following subsection -

"(5) The Board shall, after making any repayment under subsection (4), apply any surplus -

- (a) firstly, and in priority to any amount described in paragraph (b), to repay -
  - (i) any interest or charges incurred by it in relation to any money borrowed by it for the purposes of that default, and
  - (ii) any costs, fees or expenses incurred by it in or in connection with performing its functions under the Ordinance, and
- (b) secondly, to repay to each contributing participant in proportion to its contribution to the relevant compensation levy.",
- (q) in section 28(1), immediately after "Any document to be given", insert "to",
- (r) in section 32 -
  - (i) in the section heading, for "regulations", substitute "subordinate legislation",

- (ii) in subsection (1), immediately before each appearance of the word "regulation", insert "order or", and
  - (iii) in subsection (2), immediately before the word "regulation", insert "order or",
- (s) in section 33(1) -
- (i) immediately after the definition of "**the Board**", insert the following definition -

""**Chairman of the Board**" includes the Deputy Chairman thereof when acting as Chairman,"

- (ii) immediately after the definition of "prescribed", insert the following definition -

""**profits**" means the profits of a participant from ordinary activities after interest and before taxation, ascertained from the audited accounts of that participant,"

- (iii) immediately after the definition of "the Register of Companies", insert the following definitions -

""**registered charity**" means a charity registered in accordance with the Charities and Non-Profit Organisations (Registration) (Bailiwick of Guernsey) Law, 2008," and

""**relevant security**" means any security interest, mortgage, charge, *hypothèque*, lien or other security but, for the avoidance of doubt, does not include any right of set-off,"

(iv) in the definition of "**retirement annuity trust scheme**", immediately after "the Income Tax Law", insert "or, at the discretion of the Board, any other scheme for providing retirement benefits with a similar structure", and

(v) immediately after the definition of "the Scheme", insert the following definition -

""**security interest**" has the meaning given in the Security Interests (Guernsey) Law, 1993," and

(t) in paragraph 1 of Schedule 4 -

(i) in subparagraph (a), for "a trustee", substitute "the trustee",

(ii) in subparagraph (c), delete "and",

(iii) in subparagraph (d), immediately after "part thereof," insert "and", and

(iv) immediately after subparagraph (d), insert the following subparagraph -

"(e) a registered charity,".

**Interpretation.**

2. (1) In this Ordinance –

"**enactment**" means any Law, Ordinance or subordinate legislation, and

"**subordinate legislation**" means any statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948<sup>e</sup> applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Extent.**

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

4. This Ordinance may be cited as the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2014.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

**Commencement.**

5. This Ordinance shall come into force on the 24<sup>th</sup> September, 2014.

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