

# **BILLET D'ÉTAT No. XIX, 2008**

**26<sup>th</sup> November, 2008**

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The Banking Deposit Compensation Scheme  
(Bailiwick of Guernsey) Ordinance, 2008

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# **The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008**

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## **The Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolution of the 26<sup>th</sup> November, 2008<sup>a</sup>, and in exercise of the powers conferred on them by section 46 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### *The Scheme*

#### **Establishment of the Guernsey Banking Deposit Compensation Scheme.**

1. (1) The Guernsey Banking Deposit Compensation Scheme ("**the Scheme**") is hereby established.

(2) The Scheme shall be administered by the Guernsey Banking Deposit Compensation Board ("**the Board**").

#### **Participants in the Scheme.**

2. (1) A person who holds a banking licence ("**a participant**") shall participate in the Scheme.

(2) A participant may only withdraw from the Scheme where –

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

<sup>b</sup> No. XIII of 1994; amended by No's. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008 (the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008). Also amended by Ordinance No. XXXIII of 2003; and Guernsey Statutory Instrument No.1 of 2008.

- (a) its banking licence has been revoked under section 8 of the Law, or it has surrendered its banking licence under section 11 thereof, and
- (b) it has given the Board at least 6 months' written notice.

(3) A former participant shall be deemed to be a participant in respect of a default which occurred while it was a participant.

*The Board*

**The Guernsey Banking Deposit Compensation Board.**

3. (1) The Department shall appoint the Board.

(2) Pending the appointment of the Board, its functions under this Ordinance shall be carried out by the Department.

(3) The Board shall consist of the following members –

- (a) a Chairman, and
- (b) up to 4 ordinary members.

(4) The appointment of a member of the Board under this section shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done by the Board or by that member during his appointment.

- (5) A member of the Board –
  - (a) shall hold office for a term not exceeding 5 years,
  - (b) is eligible for reappointment if he has not been dismissed,
  - (c) may resign by notice in writing to the Department at any time, and
  - (d) may be dismissed by the Department if –
    - (i) he is under a legal disability,
    - (ii) he is bankrupt or has made an arrangement or compromise with his creditors,
    - (iii) he is convicted of an indictable offence,
    - (iv) he is disqualified from acting as a director under Part XXV of the Companies Law, or
    - (v) he is otherwise unable or unfit to continue.
  
- (6) The names of the members of the Board and any resignation, dismissal and appointment of a member of the Board shall be published.
  
- (7) The Board shall act with a quorum of two members, one of whom must be the Chairman.

(8) The Chairman has an original vote and also, where there is an equality of votes, a casting vote.

(9) Subject to subsections (7) and (8), the Department may prescribe the procedures of the Board, which may include the procedures by which the members of the Board may appoint alternates.

(10) For the avoidance of doubt, if a member of the Board is, by any means, in communication with one or more other members so that each member participating in the communication can hear or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating.

(11) No vacancy in the membership of the Board or irregularity in the appointment of any member shall invalidate its proceedings.

**Status and powers of the Board.**

**4.** (1) The Board –

(a) is a body corporate with perpetual succession, and

(b) may sue and be sued in its name.

(2) The Board may exercise all the powers that a company registered in Guernsey with unlimited objects may exercise for the purpose of carrying out its functions and, without limitation, may exercise the powers set out in Schedule 1.

(3) Without prejudice to the generality of subsection (2), the Board may insure all, or any part of, the risk of the payment of compensation pursuant to the Scheme in such manner as the Board considers appropriate.

**Confidentiality and disclosure of information.**

5. (1) A member of the Board shall not disclose or cause or permit the disclosure of any document or information which relates to the business or affairs of any person and which is acquired by him in the course of carrying out his functions as a member of the Board, except -

- (a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired,
- (b) where at the time of disclosure, the document or information is or has already been made available to the public from other sources or information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it, or
- (c) to the extent that the disclosure is necessary -
  - (i) to enable him to perform his functions as a member of the Board,
  - (ii) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal, regulatory or



disciplinary proceedings, whether in the Bailiwick or elsewhere, or

(iii) to comply with an order of a court.

(2) Where any document or information is disclosed to any person under subsection (1)(a) or (c)(i) or (ii), that person shall not disclose it or cause or permit its disclosure to a third party without the consent of the Board.

(3) A person who discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) or (2) is guilty of an offence and liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine of up to level 5 on the uniform scale, or to both.

*The funds*

**Establishment of funds.**

6. (1) The Board shall establish –

- (a) an administration fund ("**the administration fund**"),
- and

- (b) where a declaration of default is made under section 9(1) ("**a declaration of default**"), a compensation fund in respect of that default ("**a compensation fund**"),

which shall together be known as "**the funds**".

(2) The Board shall hold, manage and apply the funds in accordance with the provisions of this Ordinance.

(3) The Board may transfer money between the funds as it thinks fit for the purpose of the Scheme in accordance with sections 7 and 8.

**The administration fund.**

7. (1) The Board shall pay into the administration fund -
- (a) the annual fees paid under section 16,
  - (b) any levy imposed on participants under section 17 ("**an insurance levy**"),
  - (c) any money borrowed by the Board for the purposes of administering the Scheme,
  - (d) any money which would be paid into a compensation fund under section 8 but for the fact that such a fund has not been established,
  - (e) where any money is invested, any income from such investments, and

- (f) any other money received by the Board for the purposes of the Scheme, not being money required to be paid into a compensation fund.
- (2) The Board shall pay out of the administration fund -
- (a) the costs incurred in administering the Scheme and the funds, including the expenses of the members of the Board, and otherwise in performing its functions under this Ordinance,
  - (b) any money required for the repayment of (or interest on or charges in connection with) any money borrowed for the purposes of the Scheme,
  - (c) any money for the purpose of investment,
  - (d) any insurance premium or other costs of an insurance arrangement established under section 4(3), and
  - (e) any money described in subsection (1)(d) for the purpose of being paid into a compensation fund.

**Compensation funds.**

**8.** (1) The Board shall pay into a compensation fund established on a declaration of default of a participant -

- (a) any levy imposed on participants under section 18 in respect of that default ("**a compensation levy**"),

- (b) where money received by way of a compensation levy is invested, any income from such investments,
  - (c) any money borrowed by the Board for the purposes of that default,
  - (d) any money received by the Board from a liquidator, receiver or administrator of the participant in default, and
  - (e) any money received by the Board from a policy of insurance or payment under any insurance arrangement established under section 4(3).
- (2) The Board shall pay out of a compensation fund –
- (a) any money determined by the Board to be compensation for qualifying claimants,
  - (b) any money required for the repayment of (or interest on or charges in connection with) any money borrowed for the purposes of the default,
  - (c) any money for the purpose of investment,
  - (d) any money to be paid to participants under section 23(4), and

- (e) any money to be paid to qualifying claimants under section 23(5).

*Default and compensation*

**Default.**

9. (1) The Commission shall make a declaration of default in respect of a participant where it is satisfied that subsection (2)(a) or (b) applies.

(2) The Commission shall make a declaration under subsection (1) within 21 days of the date of any of the following events –

- (a) in respect of a participant incorporated in Guernsey –
  - (i) an arrangement or compromise with the participant's creditors has taken place to which Part VIII of the Companies Law applies,
  - (ii) a voluntary winding up resolution has been passed under Part XXII of the Companies Law,
  - (iii) a winding up order has been made under Part XXIII of the Companies Law,
  - (iv) the participant has been struck off the Register of Companies under Part XX of the Companies Law,
  - (v) an administration order has been made under Part XXI of the Companies Law,

- (vi) the participant's affairs have been declared *en désastre* at a meeting of its arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Sénéchal, or
  - (vii) an interim vesting order has been made in respect of any real property held by the participant in the Bailiwick, or
- (b) in respect of a participant incorporated outside Guernsey, the Commission considers that an event corresponding to any of those listed in paragraph (a) has occurred.

(3) In the event of a declaration of default being made, the Board shall, if it has not already done so, appoint auditors to audit its financial affairs.

(4) No auditor may be appointed under subsection (3) unless he is qualified for appointment as an auditor under the Companies Law.

**Application forms for compensation.**

**10.** (1) The Board shall, within 21 days of the date of a declaration of default, make available an application form for the purpose of claiming compensation ("**an application form**") to any person who claims that he had made a qualifying deposit with the participant in default ("**a claimant**").

(2) An application form shall require a claimant to provide –

- (a) his name and address,
- (b) information about the capacity in which he is claiming compensation,
- (c) the amount and any evidence in respect of the qualifying deposit for which he is claiming compensation,
- (d) the date (if any) upon which the qualifying deposit would become due, and
- (e) any evidence that he has made a claim to –
  - (i) the liquidator, receiver or administrator (or the equivalent elsewhere than in the Bailiwick) of the participant in default (as the case may be), or
  - (ii) any equivalent scheme elsewhere than in the Bailiwick in respect of the participant in default,

and the application form shall be accompanied by such other documents and information, verified in such form and in such manner, as the Board may require.

**Applications for compensation.**

**11.** (1) Subject to the provisions of this section, the Board shall consider each application for compensation.

(2) The Board may only consider an application by a claimant if it is submitted –

- (a) within 6 months of the date on which the person became aware, or ought reasonably to have become aware, of the declaration of default, unless the Board determines that, by reason of exceptional circumstances, it ought to be considered after that period has expired, and
- (c) in any event, within 12 months of the date of the declaration of the default.

(3) The Board may reject an application where the claimant does not provide any document, information or evidence requested by or under section 10(2).

**Compensation.**

12. (1) The Board shall, subject to sections 10 and 11, pay compensation in sterling to a claimant ("**a qualifying claimant**") in respect of a qualifying deposit held by a participant if –

- (a) a declaration of default has been made in respect of the participant, and
- (b) the Board is satisfied that on the basis of evidence –
  - (i) produced by or on behalf of that claimant, or
  - (ii) otherwise available to the Board,



the participant in default holds that qualifying deposit.

(2) Subject to the provisions of subsection (3)(b), the total amount of compensation payable to any qualifying claimant shall be limited to the lesser of

–

(a) the total amount of all qualifying deposits with the participant in respect of which he is a claimant, or

(b) £50,000.

(3) For the purposes of ascertaining the amount of compensation payable, a qualifying deposit held in a joint account shall be divided according to the holders' shares in the account or equally if there is no indication of the share of each holder, but, subject to subsection (4), no more than the amount specified in subsection (2) shall be paid to each holder of a share in a joint account.

(4) A deposit of monies by –

(a) the trustee of a retirement annuity trusts scheme,

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

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

shall be treated as a separate qualifying deposit for which compensation may be paid to the trustee, parent, administrator or executor in addition to that payable in respect of any other description of deposit.

(5) The Board may in its absolute discretion deduct an administration charge from each qualifying deposit, provided that such charge does not exceed £50.

(6) Subject to subsection (4), a qualifying claimant may not receive compensation in respect of more than one account held with a single participant in default.

(7) The compensation to which a qualifying claimant is entitled shall be reduced by the amount of any repayment that the Board is satisfied that he receives in respect of the qualifying deposit, including any payment –

- (a) from an equivalent scheme elsewhere than in the Bailiwick,
- (b) from an insurance policy taken out by or on behalf of the claimant in respect of the deposit,
- (c) from the liquidator, receiver or administrator (or the equivalent elsewhere than in the Bailiwick) of the participant in default, or
- (d) arising from any existing right of set-off between the participant and the claimant at the date of declaration of default.

(8) The Board may decide to delay payment to a qualifying claimant until the determination of –

- (a) any criminal charge brought against him or any other person entitled to or interested in a qualifying deposit held by him,
- (b) any confiscation or forfeiture proceedings brought against him or any other such person, or
- (c) any investigation which may lead to any such charge or proceedings being brought against him or any other such person,

under the provisions of –

- (i) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>c</sup>,
- (ii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>d</sup>,

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<sup>c</sup> Order in Council No. VIII of 1999; amended by No. II of 2005; No. XV of 2007; also amended by Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; Ordinance XLVII of 2007; and Guernsey Statutory Instrument No. 27 of 2002; and No. 33 of 2007.

<sup>d</sup> Order in Council No. VII of 2000; amended by No. II of 2005; and No's XVI and XVII of 2007. Also amended by Ordinance No. XXXIII of 2003.

- (iii) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>e</sup>,
- (iv) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007<sup>f</sup>, or
- (v) any equivalent provisions in any other jurisdiction.

(9) Where a qualifying deposit is held in a currency other than sterling, the relevant exchange rate between that currency and sterling for the purpose of calculation of the amount specified in section 12(2) shall be the middle market rate on the date of the declaration of default.

(10) Where any money remains after the payment of compensation to qualifying claimants and in respect of other costs, that money shall be repaid to the contributing participants in proportion to their contributions.

(11) Where a claimant is aggrieved by a decision of the Board relating to compensation (including, without limitation, his entitlement thereto), he may appeal to the Court in accordance with the provisions of Schedule 3.

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<sup>e</sup> Order in Council No. XVI of 2002.

<sup>f</sup> Order in Council No. XVII of 2008. Also amended by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008.

**Interest on qualifying deposits.**

13. (1) Where interest has accrued on any qualifying deposit before a declaration of default has been made in respect of the participant holding that deposit, the Board may in its absolute discretion pay interest to a qualifying claimant, and where it does so, it may pay that interest at such rate and for such period as it determines.

(2) Where the Board pays any sum of interest under subsection (1), the combined total of the compensation and that sum shall not exceed the relevant amount specified in section 12(2).

(3) Notwithstanding the date of the maturity of the deposit, when a declaration of default is made in respect of a participant holding qualifying deposits, interest may not be awarded by the Board in respect of any period after the date on which the declaration is made.

**Maximum liability of the Scheme.**

14. (1) The total liability of the Scheme to pay compensation within any 5 year period in respect of one or more declarations of default shall not exceed £100,000,000.

(2) Where the total amount of compensation payable to qualifying claimants exceeds £100,000,000, the compensation shall be apportioned *pari passu*.

**Payment of compensation.**

15. (1) Subject to subsection (2), the Board shall pay compensation to each qualifying claimant within 3 months of –

(a) the date of the declaration of default, or

- (b) the date of the receipt of his application under section 11,

whichever is later.

- (2) Where the Board is satisfied 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 any other claims which may be made on the Scheme as a result of any other declaration of default,

it may pay him a portion of the compensation payable, the amount of which shall be determined in the absolute discretion of the Board.

(3) Where a portion of the compensation payable is paid under subsection (2), the Board shall pay in each subsequent calendar year further portions, of such amounts and at such times determined in the absolute discretion of the Board, until, subject to section 14, the full amount of compensation is paid.

*Funding of the Scheme*

**Annual fees.**

16. (1) In respect of each calendar year, each participant shall pay an annual fee which shall be determined by the Board.

- (2) The annual fee in respect of any calendar year becomes due –

- (a) in the case of an institution which becomes a participant at any time during that calendar year, at that time (but the institution will only pay the fee in proportion to the number of full months remaining in that calendar year), and
- (b) in the case of any other participant, before the 1<sup>st</sup> January of that calendar year or such later time the Board may decide.

(3) If, when determining the amount of the annual fee for a forthcoming calendar year, it appears to the Board that there is a sufficient credit balance in the administration fund to cover the expected payments from the fund under section 7(2) in that year, the Board may determine to waive the annual fee for that year and shall notify the participants accordingly.

(4) The Board shall not charge a fee under this section for the calendar year ending 31<sup>st</sup> December 2008, for which the administrative expenses will be paid by the States.

**Levies on participants for the purposes of insurance.**

17. (1) The Board may impose on all participants a levy ("**an insurance levy**") to meet the costs of any insurance premium payable pursuant to section 4(3) in that year.

(2) The liability of each participant in respect of an insurance levy shall be determined by the Board on such basis as the Department may prescribe by regulations.

(3) The Board shall publish the criteria by which the liability of each participant is to be calculated.

(4) The Board may require each participant to provide it with any information that the Board may reasonably require to determine the liability of that participant.

(5) The liability of each participant is confidential and shall not be disclosed to any person other than the Commission.

**Levies on participants for the purposes of compensation.**

**18.** (1) If a participant is declared to be in default, the Board may impose on all other participants a compensation levy or series of such levies to meet

–

(a) claims for the compensation of qualifying creditors,  
and

(b) other costs, expenses and payments which may be paid out of the compensation fund under section 8(2).

(2) The liability of each participant to a compensation levy in respect of a default shall be calculated in accordance with Schedule 2.

(3) Where the Board proposes to impose a compensation levy, it shall, having regard to any money which has been paid or is to be paid under a policy of insurance or any other insurance arrangement under section 4(3), estimate the total of any compensation levy or series of such levies which the Board might impose and provide this estimate to each participant.



(4) The Board shall not impose on a participant in any calendar year a compensation levy or series of such levies 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.

(5) Where the amount raised by a compensation levy is not sufficient to meet the claims of qualifying creditors –

- (a) the Board may impose a further compensation levy on each participant for the purpose of raising the outstanding money, or
- (b) where a compensation levy would exceed the total in subsection (4), the Board may impose a further such levy in each calendar year following the calendar year in question until the claims of qualifying creditors are met.

(6) Where the total raised by a compensation levy or series of such levies exceeds the amount of the claims and costs referred to in subsection (1), as finally determined, the Board shall repay the excess to the participants in proportion to their contributions.

(7) Where the Board imposes a compensation levy, it shall 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).

(8) If, at any time after a compensation levy is imposed, any participant liable for a contribution to that levy is itself subject to a declaration of default made before it has paid that contribution –

- (a) that liability may be deferred or cancelled in the absolute discretion of the Board, and
- (b) if it does so, the total amount to be raised by the levy shall be reduced accordingly.

(9) Where a compensation levy or any part thereof is not paid by the date imposed by the Board, interest shall accrue on the outstanding balance at a rate 2% above the Bank of England base rate from time to time applicable from the date by which the levy was due to have been paid until the date of payment.

**Appeal by participants.**

**19.** Where a participant is aggrieved by a decision of the Board in respect of the amount of –

- (a) annual fees under section 16,
- (b) a compensation levy, or

- (c) an insurance levy,

it may appeal to the Court in accordance with the provisions of Schedule 3.

*Miscellaneous*

**Co-operation.**

**20.** (1) Each participant (including a participant in default) shall co-operate with the Board in making available to it such documents and information in such form and verified in such manner as the Board may require to carry out its functions.

(2) The duty of co-operation extends to any successor of the participant, including –

- (a) a liquidator, if the participant is being wound up,
  - (b) a receiver, if the participant is in receivership,
  - (c) an administrator, if the participant is in administration,
  - (d) any other person who appears to the Board to be carrying out duties similar to those in paragraphs (a), (b) and (c) in respect of the participant or who has continuing responsibility for the affairs of the participant, and
  - (e) any person to whom the undertaking of the participant
- is transferred.

**Disclosure of information.**

21. For the avoidance of doubt, sections 43, 44 and 45 of the Law apply for the purposes of this Ordinance.

**Powers of Board in relation to participant in default.**

22. The Board –

- (a) has the rights, powers and privileges of a creditor of a participant in default,
- (b) may nominate a member of the Board or any other appropriately qualified person to sit upon any creditors' committee or committee of inspection of the participant, and
- (c) is entitled to –
  - (i) receive any notice addressed to creditors, and
  - (ii) attend (and vote at) any creditors' meeting under the Law, the Companies Law or any other rule of law.

**Subrogation.**

23. (1) The Board has in respect of a qualifying deposit the right of subrogation to the rights of any qualifying claimant who applies for compensation in respect of that deposit under the Scheme.

(2) No compensation shall be paid to any qualifying claimant in respect of any qualifying deposit until that claimant has agreed in writing that –

- (a) his rights, which includes a right to settle or compromise his claim, in respect of that deposit will vest in the Board,
- (b) he will provide such documents, information and assistance, in such form and verified in such manner as the Board may require, to enable it to exercise those rights, and
- (c) he will pay the Board any amount he receives in respect of those rights.

(3) Any amount received by the Board under this section shall be paid into the compensation fund established in respect of the default in question.

(4) Where –

- (a) a compensation levy has been imposed, and
- (b) the Board has received any amount by reason of its right of subrogation under this section,

the Board shall repay to each contributing participant an amount not exceeding that levied upon it in proportion to its contribution.

(5) The Board shall, after any repayment under subsection (4), pay the claimant any amount which it receives in respect of his deposit and which exceeds the amount of compensation payable in respect of the deposit.

**Failure to comply with the Scheme.**

24. (1) If a participant contravenes any provision of this Ordinance or any prohibition, restriction, condition, requirement, direction or arrangement under it, the Board shall inform the Commission who may, without prejudice to the generality of its powers under the section 8(1)(b) of the Law, revoke the participant's licence under that section.

(2) For the purposes of ensuring compliance with the provisions of this Ordinance, the Board may require a participant to provide such security as the Board considers appropriate in respect of any present or future liability of the participant to pay a compensation levy and any money realised under such security shall be credited to the relevant compensation fund.

(3) Any outstanding amount in respect of annual fees under section 16, an insurance levy or a compensation levy is recoverable by the Board as a civil debt.

**Failure to comply with requests by the Board.**

25. (1) If any person –
- (a) fails without reasonable excuse to comply with any requirement imposed by or under section 20,
  - (b) fails without reasonable excuse to answer any question properly put to him by or on behalf of the Board under section 20, or

- (c) intentionally obstructs the Board's investigations under section 20,

then -

- (i) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, and
- (ii) the Board shall inform the Commission.

(2) The Commission may exercise any of its powers in relation to the default (including, without limitation, the powers conferred by sections 25 to 29 of the Law), and the provisions of the Law shall apply accordingly.

**False or misleading information; and corporate offences.**

**26.** (1) A person who -

- (a) in connection with an application for compensation,
- (b) in purported compliance with a requirement imposed by or under this Ordinance or any regulation made under it, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which the person providing the information or document intends, or could reasonably be expected to know, that the information or document would or might be used by the Board or the

Commission for the purpose of exercising its functions under this Ordinance -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A participant or former participant which fails to provide the Board or the Commission with any information in its possession knowing or having reasonable cause to believe -



- (a) that the information is relevant to the exercise by the Board or the Commission of its functions under this Ordinance in relation to the participant or former participant, and
- (b) that the withholding of the information is likely to result in the Board or the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the participant or former participant,

is guilty of an offence.

(3) A person who is guilty of an offence under subsection (1) or (2) is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(4) Where an offence under this Ordinance is committed by a participant and 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, chief executive, controller, manager, secretary or other similar officer of the participant or any person purporting to act in any such capacity, he as well as the participant is guilty of the offence and may be proceeded against and punished accordingly.

(5) Where the affairs of a participant are managed by its members, subsection (4) applies to a member in connection with his functions of management as if he were a director.

(6) In subsections (4) and (5) a participant includes a former participant.

**Information to depositors.**

27. (1) Every participant shall make information available in a readily comprehensible form in explanatory material to current and intending depositors about the Scheme, which shall include (without limitation) a summary of the provisions of the Scheme, including details of the amount and scope of cover offered.

(2) Every participant shall also, on request, inform current and intending depositors about the conditions for compensation and the procedures for claiming it.

(3) The Board may issue recommended wording for the information required to be given by this section.

**Service.**

28. (1) Any document to be given or served on the Board under this Ordinance may be given or served by being left at, or sent by post or transmitted to, the principal office of the Board.

(2) For the purposes of subsection (1) –

- (a) the expression "**by post**" means by registered post or recorded delivery service, and
  - (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication.
- (3) Subsection (2)(b) is without prejudice to –
- (a) the Electronic Transactions (Guernsey) Law, 2000<sup>g</sup>,
  - (b) the Electronic Transactions (Alderney) Law, 2001<sup>h</sup>,
  - (c) the Electronic Transactions (Sark) Law, 2001<sup>i</sup>, and
  - (d) the provisions of any regulations made under section 3(8).
- (4) Subsections (1) and (2) are without prejudice to any other lawful method of service.

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<sup>g</sup> Order in Council No. VIII of 2000.

<sup>h</sup> Order in Council No. XXVI of 2001.

<sup>i</sup> Order in Council No. X of 2001.

(5) Notwithstanding the provisions of subsections (1), (2) and (4), and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Board under or for the purposes of this Ordinance shall be deemed to have been given or served until it has been received.

**Tax treatment.**

29. (1) For the purposes of the Income Tax Law, a participant –

- (a) may deduct from its income as an allowable expense any money paid as a contribution to the funds (whether as a fee or levy), and
- (b) shall treat as a trading receipt any repayment made by the Board under section 18(6).

(2) The funds and the income of the Board are exempt from income tax, and any real property of the Board is exempt from tax on real property.

**Immunity from liability.**

30. No liability shall be incurred by the Board or the Department, or by any member, officer or servant of either of them, in respect of anything done or omitted to be done after the commencement of this Ordinance in the discharge or purported discharge of any function conferred by or under this Ordinance unless the thing was done or omitted to be done in bad faith.

**Non-retrospectivity of the Scheme.**

31. (1) For the avoidance of doubt, where any of the events listed in section 9(2) has occurred in respect of a participant before the commencement of this Ordinance -

- (a) the Commission shall not make a declaration of default in respect of that participant, and
  - (b) the Board shall not pay any compensation to any qualifying claimant in respect of any qualifying deposit held by that participant.
- (2) Where in respect of the participant mentioned in subsection (1) –
- (a) any of the events listed in section 9(2) occurs in respect of it after the commencement of the Ordinance, and
  - (b) that event is linked to the event in subsection (1),

the Commission shall not make a declaration of default in respect of that participant, and the Board shall not pay any compensation to any qualifying claimant in respect of any qualifying deposit held by that participant.

(3) For the purposes of this section, "**linked**" means that the event mentioned in subsection (2)(a) arises from or in respect of the same facts, matters, circumstances or situation from which the event mentioned in subsection (1) arose.

**General provisions as to regulations.**

32. (1) Any regulation under this Ordinance -

- (a) may be amended or repealed by a subsequent regulation made hereunder,
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new regulation.

(2) Any power conferred by this Ordinance to make any regulation may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of

cases, or different provision for the same case or class of case for different purposes, and

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Interpretation.**

33. (1) In this Ordinance, unless the context requires otherwise –

"**administration fund**" has the meaning given in section 6(1)(a),

"**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"**the Bailiwick**" means the Bailiwick of Guernsey,

"**banking licence**" has the meaning given in section 1 of the Law,

"**bankrupt**", in relation to a person, includes a person -

- (a) whose affairs have been declared *en désastre* at a meeting of his arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Sénéchal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,

- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929<sup>j</sup>,

**"the Board"** means the Guernsey Banking Deposit Compensation Board appointed under section 3,

**"child"** means a person who has not attained the age of 18,

**"the Commission"** means the Guernsey Financial Services Commission,

**"the Companies Law"** means the Companies (Guernsey) Law, 2008<sup>k</sup>,

**"compensation fund"** has the meaning given in section 6(1)(b),

**"compensation levy"** means a levy imposed on participants under section 18,

**"the Court"** means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal the Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"Court of Appeal"** means the court established by the Court of

<sup>j</sup> Ordres en Conseil Vol. VIII, p. 310.

<sup>k</sup> Order in Council No. VIII of 2008.



Appeal (Guernsey) Law, 1961<sup>1</sup>,

"**declaration of default**" means a declaration made in respect of a participant under section 9(1),

"**the Department**" means the States Commerce and Employment Department,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**equivalent scheme**" includes any –

- (a) deposit guarantee scheme,
- (b) deposit protection scheme, and
- (c) deposit compensation scheme,

however titled,

"**the funds**" has the meaning given in section 6(1),

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<sup>1</sup> Ordres en Conseil Vol. XVIII, p. 315.

"**the Income Tax Law**" means the Income Tax (Guernsey) Law, 1975<sup>m</sup>,

"**indictable offence**" means an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way,

"**insurance levy**" means a levy imposed on participants under section 17,

"**the Law**" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

"**limited partnership**" has the meaning given in section 1 of the Limited Partnership (Guernsey) Law, 1995<sup>n</sup>,

"**middle market rate**" means the middle market closing rate of exchange for the currency in question on the day of the declaration of default as published in the Financial Times but where no such rate is published it shall be such rate of exchange as the Board determines,

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<sup>m</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; No. XXI of 2007; and the Income Tax (Zero 10) (Guernsey) Law, 2007. Also amended by Ordinance No. XXXIII of 2003.

<sup>n</sup> Order in Council No. XII of 1995; amended by No. V of 1996; No. IV of 2001; and No. X of 2007. Also amended by Ordinance No. XXXIII of 2003.

"**parent**" means a mother or father of a child with parental responsibility for that child,

"**participant**" has the meaning given in section 2(1),

"**partnership**" has the meaning given in section 1 of the Partnership (Guernsey) Law, 1995<sup>0</sup>,

"**prescribed**" means prescribed by regulations of the Department,

"**published**" means published in such form and in such manner as the Board may determine,

"**qualifying claimant**" has the meaning given in section 12(1),

"**qualifying deposit**" means the amount, including any accrued interest allowed under section 13(1), in an account in sterling or any other currency, held with a participant in the Bailiwick, which is of a type listed under Schedule 4,

"**the Register of Companies**" has the meaning given in section 496 of the Companies Law,

"**retirement annuity trust scheme**" means a trust scheme approved under section 157A of the Income Tax Law,

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<sup>0</sup> Order in Council VIII of 1995.

"**the Scheme**" has the meaning given in section 1,

"**States**" means the States of Guernsey,

"**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, and

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>P</sup>.

(2) Words and phrases in this Ordinance have the same meaning as in the Law, unless a different meaning is assigned by subsection (1).

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

(4) References in this Law to any enactment are references thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Title and extent.**

**34.** (1) This Ordinance may be cited as the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008.

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<sup>P</sup> Ordres en Conseil Vol. XXXI, p. 278.

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

- (2) This Ordinance has effect throughout the Bailiwick.

## SCHEDULE 1

Section 4(2)

## POWERS OF THE BOARD

1. Without limitation, the Board may -
  - (a) enter into contracts,
  - (b) acquire, hold and dispose of property (gratuitously or onerously, beneficially or on trust),
  - (c) create, execute or perform trusts,
  - (d) operate bank accounts,
  - (e) invest in stocks, funds, shares, securities and other investments,
  - (f) borrow or lend money (with or without having given or taken security),
  - (g) guarantee the performance of obligations by other persons,
  - (h) participate in joint ventures with other persons, and
  - (i) retain the services of any person, and employ staff, on such terms and conditions (including provision for pensions or gratuities) as it may agree.
  
2. Where the Board is satisfied that –

- (a) a declaration of default has been made,
- (b) the reputation of Guernsey as a financial centre is at risk,
- (c) the total cost to the Scheme of exercising any of the following powers is likely to be lower than paying compensation, and
- (d) the Commission has been consulted,

the Board may -

- (i) take such steps as it considers necessary to restructure the business of a participant by way of altering its capital base or facilitating its sale, merger, or takeover,
  - (ii) provide financial assistance to any participant necessary to prevent the failure of that participant,
  - (iii) acquire, sell or otherwise deal with the property, assets and undertaking of a participant or any shareholding of a participant at a price it considers reasonable, and
  - (iv) appoint such persons as it considers necessary to assist in any of the functions above.
3. The Board may arrange for any of its functions to be performed by a third party.

4. A function performed by the third party pursuant to an arrangement under this Schedule is for all purposes performed by the Board; and every decision taken or other thing done by the third party pursuant to such an arrangement has the same effect as if taken or done at a quorate meeting of the Board.
  
5. An arrangement under this Schedule for the performance of a function by the third party –
  - (a) may be varied or terminated at any time by the Board, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and
  
  - (b) does not prevent the performance of the function by the Board whilst the arrangement subsists.



## SCHEDULE 2

Section

18(2)

## COMPENSATION LIABILITY OF PARTICIPANTS

Where the Board proposes to impose a compensation levy, the individual liability of each participant shall be determined on the following basis –

- (a) each participant is liable in equal shares with every other participant for the first £10,000,000 of the Board's estimate under section 18(3), and
- (b) each participant shall be liable for the remainder of that estimate on the basis of criteria prescribed by the Department and published by the Board.

## SCHEDULE 3

Sections 12(11) and 19

APPEALS FROM DECISIONS  
OF THE BOARD

1. An aggrieved person may appeal to the Court by a summons served on the Board.
2. The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the decision appealed against.
3. The grounds of an appeal are that -
  - (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
4. On an appeal the Court may -
  - (a) set the decision of the Board aside, in whole or in part, and, if the Court considers it appropriate to do so, remit the matter to

the Board with or without a direction to make any other decision which the Board may make under this Ordinance, or

(b) confirm the decision, in whole or in part.

5. On an appeal against a decision of the Board, the Court may, on the application of the claimant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.
6. An appeal from a decision of the Court lies to the Court of Appeal on a question of law.
7. An appeal to the Court of Appeal under this Ordinance lies only with the leave of that Court and section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>r</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this Ordinance as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

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<sup>r</sup> Ordres en Conseil Vol. XVIII, p. 315.

## SCHEDULE 4

Section

33(1)

## DEPOSITS WHICH ARE QUALIFYING DEPOSITS

1. Any deposit made by -
  - (a) a trustee for the purposes of a retirement annuity trust scheme,
  - (b) a parent for the benefit of his child,
  - (c) a natural person for his own benefit, and
  - (d) an administrator or executor of an estate of a deceased person where the deposit represents the proceeds of that estate (or part thereof),

but not a deposit arising out of transactions listed in paragraph 2.
  
2. A deposit is not a qualifying deposit if in connection with it there has been a conviction, or any confiscation or forfeiture order, under the provisions of -
  - (a) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
  - (b) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

- (c) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (d) the Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
- (e) any equivalent provisions in any other jurisdiction.

3. This Schedule may be amended by regulations of the Department.