

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**PROJET DE LOI**

Entitled

**THE BANKING SUPERVISION (BAILIWICK OF GUERNSEY) LAW, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Banking Supervision (Bailiwick of Guernsey) Law, 2020", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Projet de Loi repeals and replaces the Banking Supervision (Bailiwick of Guernsey) Law, 1994 ("the 1994 Law"), as amended, but with the enforcement provisions largely being transferred to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020. As well as achieving the four principal objectives described in the first policy letter directing the preparation of the legislation (see under "background" below), the revision has enabled the text of the 1994 Law to be updated and brought into alignment with the more recent regulatory Laws and in particular the Insurance Business (Bailiwick of Guernsey) Law, 2002, which was the first of the regulatory Laws to be drafted after the commencement of the Human Rights (Bailiwick of Guernsey) Law, 2000.

**Background**

The Law is part of a major legislative project by which the five principal Laws dealing with the regulation of financial services business in the Bailiwick of Guernsey, namely the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, the Insurance Business (Bailiwick of Guernsey) Law, 2002, and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (all of which have been amended on numerous occasions), will be replaced by new Laws, or, in the case of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, amended by Ordinance under the Ordinance-making powers set out in those two Laws.

As well as consolidating the previous heavily amended enactments, the four principal objectives described in the first Policy Letter directing the preparation of the legislation (see paragraph 1.1.8(b) on p. 2717 of Billet d'État No. XVIII of 2015) are: to ensure compliance with international and EU standards (including the new MiFID regime (Markets in Financial Instruments Directive)); to create efficiencies and ensure effective supervision; to eliminate unjustified inconsistencies by ensuring consistency of text, process and procedure across the regulatory enforcement field, except to the extent necessary to take account of the differing supervisory needs of the individual financial sectors; and to support industry and “future proof” the legislative regime.

In addition, the powers within the five principal Laws and also in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 dealing with enforcement, sanctions and penalties (criminal, civil and administrative), have largely been moved to a single enforcement powers Law (the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020). This will ameliorate the legal and administrative burden on the regulator, the Guernsey Financial Services Commission, in having to operate five enforcement regimes across the different Laws which over the years had become increasingly divergent, often in mere points of detail.

# PROJET DE LOI

ENTITLED

## **The Banking Supervision (Bailiwick of Guernsey) Law, 2020**

ARRANGEMENT OF SECTIONS

### PART I REGULATION OF DEPOSIT-TAKING BUSINESS

#### *Restriction on acceptance of deposits*

1. Prohibition of unlicensed deposit-taking business.
2. Meaning of "deposit".
3. Meaning of "deposit-taking business".
4. Power to make regulations.

#### *Licensing*

5. Applications for banking licences.
6. Grant or refusal of banking licences.
7. Fees regulations and recovery of fees.
8. Conditions of banking licences.
9. Surrender of banking licences.

#### *Principles of conduct*

10. Principles of conduct for licensed institutions.

#### *Directions*

11. Power to issue directions.

#### *Supervised roles*

12. Supervised roles.

*Information as to institutions*

13. List of, and information as to, licensed institutions.

*Notification of holding of approved and vetted supervised roles, etc*

14. Notification of and objection to holders of approved supervised roles.
15. Notification of and objection to holders of vetted supervised roles.
16. Notification of change of holder of supervised role.
17. Notification of acquisition of additional voting power or reduction of voting power.

PART II  
APPEALS, OBTAINING OF DOCUMENTS, ACCOUNTS  
AND OTHER SUPERVISORY REQUIREMENTS

*Representations, notice of decisions  
and appeals*

18. Representations concerning proposed decisions of Commission.
19. Notice of decisions of Commission.
20. Disclosure of reasons for decisions of Commission.
21. Appeals to Royal Court against decisions of Commission.
22. Appeals from Royal Court to Court of Appeal.
23. Restriction on successive challenges.

*Invitations to make deposits*

24. Control of advertising.
25. Unsolicited calls.

*Notification of certain matters*

26. Reports of large exposures.

*Powers to obtain information  
and skilled persons, etc*

27. Persons to whom section 28 applies.
28. Power to require information and production of documents.

- 29. Appointment of skilled persons.
- 30. Falsification, etc, of documents during investigation.
- 31. Retention of documents.

#### *Accounts and auditors*

- 32. Audited accounts to be available for inspection.
- 33. Rules as to accounts, etc.
- 34. Notification in respect of auditors.
- 35. Communications by auditors, etc, to Commission.
- 36. Power to request meetings with auditors, actuaries, etc.

#### *Making of rules, codes and guidance*

- 37. Rules of the Commission.
- 38. Particular matters that may be covered by rules.
- 39. Rules as to annual return.
- 40. Rules as to annual review.
- 41. Codes of practice and guidance.

#### *General requirements for licensed institutions*

- 42. Minimum capital requirement for licensed institutions.
- 43. System of notification to Commission and related matters.

### PART III DISCLOSURE OF INFORMATION

- 44. Restrictions on disclosure of information.
- 45. Cases where disclosure is permitted.
- 46. Information supplied to Commission by relevant supervisory authority.
- 47. Royal Court to take Commission's undertakings into account.

### PART IV COMPENSATION SCHEMES

- 48. Power to establish compensation scheme.

### PART V OFFENCES AND PENALTIES

- 49. Penalties.
- 50. Criminal liability of directors, etc.

- 51. Criminal proceedings against unincorporated bodies.
- 52. Defence of due diligence.
- 53. Jurisdiction.

## PART VI GENERAL PROVISIONS

### *Miscellaneous*

- 54. Commission to have regard to guidance, etc, under FSC Law and other matters.
- 55. Verification of information and execution of documents.
- 56. Service of notices and documents.
- 57. Documents to be submitted in electronic form and by electronic means.
- 58. Evidence.

### *Liability of States, Commission, etc*

- 59. Exclusion of liability.

### *Ordinances, regulations and rules, etc*

- 60. Ordinances, regulations, rules, codes and guidance, etc - general.
- 61. Regulations: consultation with Committees and Commission and laying before the States.
- 62. Publication of regulations, rules, codes and guidance, etc.
- 63. Making and effect of contravention of rules.
- 64. Regulations and rules are statutory instruments.
- 65. Power to adapt rules, codes and guidance, etc, under this Law.

### *Interpretation, repeals, commencement, etc*

- 66. Interpretation.
- 67. Repeals.
- 68. Savings and transitional provisions.
- 69. Citation.
- 70. Commencement.

- SCHEDULE 1: Exempted Persons.
- SCHEDULE 2: Minimum criteria for licensing.
- SCHEDULE 3: Meaning of "holding company" and "subsidiary company".

# PROJET DE LOI

ENTITLED

## **The Banking Supervision (Bailiwick of Guernsey) Law, 2020**

**THE STATES**, in pursuance of their Resolutions of the 30<sup>th</sup> October, 2015<sup>a</sup> and the 27<sup>th</sup> November, 2015<sup>b</sup>, 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.

### PART I

#### REGULATION OF DEPOSIT-TAKING BUSINESS

##### *Restriction on acceptance of deposits*

##### **Prohibition of unlicensed deposit-taking business.**

1. (1) Subject to the provisions of subsection (2), a person shall not in the Bailiwick accept a deposit in the course of carrying on, whether in the Bailiwick or elsewhere, a deposit-taking business except under the authority of, and in accordance with the conditions of, a licence granted by the Commission under the provisions of section 6 (a "**banking licence**").

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<sup>a</sup> Article V of Billet d'État No. XVIII of 2015.

<sup>b</sup> Article VIII of Billet d'État No. XX of 2015.

- (2) This section does not apply in relation to –
- (a) a person specified in Schedule 1 (provided that the exemption of a person so specified is subject to any restriction specified in Schedule 1 in relation to him), or
  - (b) a transaction of a class or description specified for the purposes of this subsection by regulations of the States of Guernsey Policy and Resources Committee (**“the Committee”**).

- (3) The Committee may by regulation amend Schedule 1 –
- (a) by adding any person to it or removing any person from it, or
  - (b) by removing, relaxing or extending any restriction set out in it or by imposing any new restriction.

(4) Regulations under subsection (2) or (3) may prescribe transactions by reference to any factor appearing to the Committee to be appropriate and, without limitation, by reference to all or any of the following –

- (a) the amount of the deposit in question,
- (b) the total liability of the person accepting the deposit to his depositors or other creditors,
- (c) the circumstances in which or the purpose for which



the deposit is made,

- (d) the identity of the person by whom the deposit is made or accepted, including his membership of a class whose membership is determined otherwise than by the Commission,
- (e) the number of, or the amount involved in, transactions of a particular class or description carried out by the person accepting the deposits or the frequency with which he carries out transactions of any particular class or description.

(5) Regulations under subsection (2) or (3) may provide that any exemption is subject to such conditions or requirements as may be specified in the regulations.

(6) Where circumstances change such that an exemption under this section in respect of –

- (a) a person, or
- (b) a business or transaction carried out by him,

is no longer applicable, it is the duty of that person, within a period of 14 days immediately following the day on which he becomes aware of the change, to give notice in writing to the Commission of the change of circumstances.

(7) A person who contravenes any provision of this section is

guilty of an offence.

(8) The fact that a deposit is accepted in contravention of the provisions of this section does not affect any civil liability arising in respect of the deposit or the money deposited.

**Meaning of "deposit".**

2. (1) Subject to the provisions of this section and of any regulations under section 4, "**deposit**" means, for the purposes of this Law, unless the contrary intention appears, a sum of money paid on terms –

- (a) under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, and
- (b) which are not referable to the provision of property or services or the giving of security,

and references in the provisions of this Law to depositors, to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of subsection (1)(b), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if –

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event of the

property or services not in fact being sold, hired or otherwise provided,

- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract, or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) Except to the extent that any provision of this Law specifically provides otherwise, in this Law "**deposit**" does not include a sum paid –

- (a) by a licensed institution,
- (b) by a person specified in Schedule 1,
- (c) by any other person in the course of carrying on a business consisting wholly or mainly of lending money,
- (d) by one company to another at a time when one is a subsidiary of the other, both are subsidiaries of another company or the same individual is a shareholder controller of both,
- (e) by a person who, at the time of payment, is a close relative of the person receiving it or who is, or is a close

relative of, the holder of an approved supervised role or vetted supervised role in respect of that person.

(4) Subsection (3)(e) has effect in its application to a sum paid by a partnership (other than a limited partnership with legal personality) as if for the reference to the person paying the sum there were substituted a reference to each of the partners.

**Meaning of "deposit-taking business".**

3. (1) Subject to the provisions of this section and of any regulations under section 4, a business is a "**deposit-taking business**" for the purposes of this Law if –

- (a) in the course of the business money received by way of deposit is lent to others, or
- (b) any other activity of the business is financed to any material extent out of the capital of or the interest on money received by way of deposit.

(2) A business is not a deposit-taking business for the purposes of this Law if in the normal course of the business –

- (a) the person carrying on the business does not hold himself out as accepting deposits on a day to day basis, and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue

of debentures or other securities.

(3) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(4) In determining for the purposes of subsection (2)(b) whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(5) For the purposes of subsection (2) there shall be disregarded –

- (a) any deposit in respect of the acceptance of which the person in question is exempt from the prohibition in section 1(1), and
- (b) any money received by way of deposit which is not used in the manner described in subsection (1).

**Power to make regulations.**

4. (1) The Committee may make regulations –

- (a) concerning deposit-taking business,
- (b) amending the meaning of "deposit", "depositor" and "deposit-taking business" for the purposes of all or any of the provisions of this Law.

(2) Without prejudice to the generality of subsection (1)(b), regulations thereunder amending the meaning of "deposit", "depositor" or "deposit-taking business" may provide for the taking into account, as the activities of a company, of the activities of any person connected with the company in such manner as may be specified in the regulations.

### *Licensing*

#### **Applications for banking licences.**

5. (1) A person wishing to obtain a banking licence shall apply in that behalf to the Commission.

(2) The application shall also state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on deposit-taking business.

(3) An application for a banking licence shall be made in such form and manner as the Commission may require and shall be accompanied by –

(a) a statement of –

- (i) the nature and scale of the proposed deposit-taking business,
- (ii) the applicant's plans for the future development of that business, and
- (iii) particulars of the applicant's arrangements for the management of that business,

- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application, and
- (c) the appropriate fee prescribed by regulations under section 7,

provided that where the applicant is already the holder of a banking licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any information, statement or other document provided by him in connection with a previous application has changed.

(4) Upon receipt of an application for a banking licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be the holder of a supervised role in respect of the applicant to provide such additional information, statements or other documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) –

- (a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the

Commission, on such aspects of that information, statement or other document as the Commission may specify,

- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement, document or report or anything in them.

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

(7) An application may be withdrawn by notice in writing to the Commission at any time before it is determined.

(8) An application is deemed to be withdrawn if -

- (a) the applicant has failed for -

- (i) a period of three months, or

- (ii) such longer period as the Commission may have specified by notice in writing to the applicant,

to provide any information, statement or other document required by the Commission for the purpose of determining the application,



- (b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,
- (c) a period of 14 days has expired following the giving of that notice, and
- (d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) -
  - (i) that notice has not been withdrawn by the Commission, and
  - (ii) the information, statement or other document in question has not been provided.

(9) Before deciding whether or not to grant a banking licence the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on a deposit-taking business in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(10) If at any time a licensed institution proposes to carry on a deposit-taking business in or from within Alderney or Sark, the Commission shall

consult in the manner described in subsection (9).

**Grant or refusal of banking licences.**

6. (1) The Commission may, upon receipt of an application for a banking licence -

(a) subject to the provisions of subsection (2), grant the application and issue a banking licence to the applicant, or

(b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a banking licence unless satisfied that the criteria specified in Schedule 2 (the “**minimum criteria for licensing**”) are fulfilled -

(a) in relation to the applicant, and

(b) in relation to any person who is or is to be the holder of an approved supervised role or vetted supervised role in respect of the applicant.

(3) In considering whether or not to grant an application for a banking licence, and without limitation, the Commission may take into account (so far as relevant) –

(a) the provisions of any code of practice or guidance issued under section 41 of this Law or section 57 or 120

of the Enforcement Powers Law, and

- (b) any matter to which it may have regard under the provisions of section 28 or 29 of the Enforcement Powers Law when considering whether or not to suspend or revoke a banking licence.

- (4) A banking licence may only be granted to a company.

(5) The Commission may refuse an application for a banking licence which is not accompanied by the appropriate fee prescribed by regulations under section 7 or which is otherwise not made in accordance with the provisions of this Law.

**Fees regulations and recovery of fees.**

7. (1) The Committee may by regulation prescribe fees to be payable to the Commission in connection with -

- (a) any of the matters specified in subsection (2), and
- (b) such other matters as the Committee may by regulation prescribe for the purposes of this Law.

- (2) The matters referred to in subsection (1)(a) are -

- (a) applications for or in respect of, and the grant, renewal or variation of, banking licences,

- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification under the provisions of or for the purposes of this Law,
- (c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,
- (d) any other matters in respect of licensed institutions or banking licences.

(3) Regulations under this section may also make such provision as the Committee thinks fit in respect of the charging of interest in the event of default in the due payment of fees, charges, penalties and other amounts required to be paid to the Commission by or under the provisions of this Law.

(4) Regulations under this section may, without limitation -

- (a) prescribe fees to be payable to the Commission annually or periodically,
- (b) specify the dates, times, intervals, occasions, circumstances or events on, at, in or within which the payment of fees or interest is to be made,
- (c) provide for the determination or calculation of any fee or interest -

- (i) in accordance with or by reference to a scale or other factors prescribed by the regulations, or
    - (ii) on such other basis as may be so prescribed,
  - (d) make provision for the payment of fees and interest by instalments of such number and amounts and at such times as the regulations may specify or as the Commission may determine, and
  - (e) make provision for the variation, on the application of the payer or of the Commission's own motion, of -
    - (i) the amount of any interest, or
    - (ii) the number, amounts and times of the instalments by which any fee or interest is to be paid.
- (5) Fees and interest payable pursuant to regulations under this section -
- (a) are recoverable from -
    - (i) the person making the application, request or deposit concerned or giving the notification or information concerned,
    - (ii) the licensed institution by or in respect of

which, or in respect of the banking licence or business of which, the fee or interest is payable, or

- (iii) such other person or entity, or class or description of person or entity, as may be specified by the regulations,

as a civil debt due to the Commission,

- (b) may not (except to the extent that express provision to the contrary is made by or under the regulations or otherwise by or under the provisions of this Law) be refunded, remitted, reduced or waived,
- (c) shall, where appropriate, be proportioned in such manner as may be prescribed by the regulations.

(6) Without prejudice to the provisions of section 60(5), regulations under this section may make different provision in respect of -

- (a) different categories, classes or descriptions of banking licence or licensed institution or different categories, classes or descriptions of deposit-taking business, or
- (b) the same categories, classes or descriptions of banking licence or licensed institution or the same category, class or description of deposit-taking business, for different purposes or in respect of different

circumstances.

(7) The provisions of this section are in addition to and not in derogation from any other provision of this Law or the provisions of the regulatory Laws in respect of the payment of fees, interest and penalties.

**Conditions of banking licences.**

8. (1) The Commission may, by notice in writing, when granting a banking licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensed institutions generally, to any class or description of licensed institution or to any particular licensed institution.

(3) The Commission may, by notice in writing, vary or rescind any condition in respect of a banking licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a banking licence may make provision as to the duration of the licence and for the protection of the institution's depositors or potential depositors; and without limitation such conditions may –

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) impose limitations on the acceptance or repayment of

deposits, the granting of credit, the making of investments or the carrying on of business,

- (c) prohibit the institution from soliciting (whether at all or in any specified manner) deposits or business, either generally or from persons who are not already depositors,
- (d) prohibit the institution from entering into any other transaction or class or description of transactions,
- (e) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the institution,
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution,
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
- (h) specify requirements as to the capitalisation and liquidity of the business of the institution,
- (i) prohibit, restrict or impose limitations on the carrying



on of deposit-taking business, or any class or description of deposit-taking business, in or from within any place, or any particular place, outside the Bailiwick –

- (i) by the institution itself,
- (ii) by any undertaking established by the institution (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
- (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).

(5) An institution which contravenes any condition of a banking licence is guilty of an offence.

(6) The contravention of a condition of a banking licence is, whether or not constituting an offence under subsection (5), a ground for the suspension or revocation of the licence (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) An institution whose banking licence is subject to a condition as to its duration may apply under section 5 for a new banking licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a banking licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 6 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a banking licence or (as the case may be) to suspend or revoke a banking licence.

**Surrender of banking licences.**

9. (1) A licensed institution may surrender its banking licence by notice in writing served upon the Commission.

(2) A surrender takes effect, subject to the provisions of subsection (5), upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the licensed institution may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a banking licence is, subject to the provisions of subsection (5), irrevocable unless it is expressed to take effect on a particular date and before that date the Commission, upon the written application of the licensed institution, by notice in writing to the licensed institution allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a banking licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers

of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 21, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of a banking licence is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of a banking licence -

- (a) if, in the opinion of the Commission, the liabilities of the licensed institution have not been discharged or transferred,
- (b) if the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or
- (c) if the name of the licensed institution would not, immediately after the surrender, comply with the requirements of section 49 of the Enforcement Powers Law.

(7) Upon the surrender of a banking licence no fee paid or payable by the licensed institution concerned pursuant to regulations under section 7 shall be refunded, remitted, reduced or waived.

#### *Principles of conduct*

**Principles of conduct for licensed institutions.**

10. (1) A licensed institution must deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning it or its business, or the deposit-taking business in relation to which it is acting as licensed institution, which ought reasonably to be disclosed to the Commission.

(2) Without limitation, the Commission may have regard to the duty imposed by this section in performing any of its functions.

*Directions*

**Power to issue directions.**

11. (1) The Commission may, at any time, by notice in writing, give such directions to any person referred to in subsection (2) (the "**directed person**"), requiring him to do or not to do any thing, as appear to the Commission to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise.

(2) A direction under this section may be given to -

- (a) a licensed institution,
- (b) subject to the provisions of subsection (5), a former licensed institution,
- (c) a person carrying on deposit-taking business -

(i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or

(ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of such business,

(d) a person who is the holder of a supervised role in respect of, or is an officer or employee of -

(i) a licensed institution, or

(ii) a person described in paragraph (c),

(e) a person who has or is reasonably suspected of having contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any of the provisions of this Law or the regulatory Laws,

(f) an ancillary vehicle of a person or entity specified in any other paragraph of this subsection, or

(g) a person or entity or class or description of person or entity prescribed for the purposes of this section by

regulations of the Committee.

(3) The Commission may vary or rescind a direction by notice in writing served on the directed person.

(4) Without prejudice to the generality of subsection (1), a direction may –

(a) require the directed person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,

(b) prohibit or impose limitations on the carrying on of deposit-taking business and other business, the acceptance or repayment of deposits, the granting of credit or the making of investments,

(c) prohibit, restrict or impose limitations on the carrying on of deposit-taking business, or any class or description of deposit-taking business, in or from within any place, or any particular place, outside the Bailiwick -

(i) by the directed person himself,

(ii) by any undertaking established by the directed person (including, without limitation, any branch, subsidiary, ancillary vehicle or special

purpose vehicle thereof), or

- (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (d) prohibit the directed person from soliciting (whether at all or in any specified manner) deposits and any other business, either generally or from specified persons or classes or descriptions of persons,
- (e) prohibit the directed person from entering into any other transaction or class or description of transactions,
- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,
- (g) specify requirements to be fulfilled otherwise than by action taken by the directed person,
- (h) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and manner and containing such information and particulars, as may be so specified,

(i) require the directed person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensed fiduciary, licensed institution or person of such other class or description as may be specified in the direction, assets of such value and description as may be so specified; and any such direction may provide that -

(i) assets kept in the custody of a trustee, custodian, licensed fiduciary, licensed institution or other person pursuant to the direction shall not, so long as the direction is in force, be removed from such custody or be made the subject of any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993<sup>c</sup>), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission,

(ii) any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993), trust, assignment, lien, right of set-off or other dealing purportedly created, executed or entered into by the directed person

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<sup>c</sup> Order in Council No. III of 1993.



in contravention of the direction shall be ineffective against any claim by any liquidator of that person,

and a direction imposed by virtue of this paragraph shall be effective in law against or (as the case may require) for the benefit of third parties notwithstanding any rule of law to the contrary,

- (j) where the directed person is a licensed institution, and without prejudice to paragraph (i), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensed fiduciary, licensed institution or person of any other class or description, in each case approved by the Commission, all assets, or all assets of any specified class or description, which -
  - (i) belong to the directed person, or
  - (ii) are held by or to the order of the directed person and either belong to depositors, investors or customers or belong to some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by depositors, investors or customers,
- (k) require the directed person to provide evidence of -
  - (i) compliance with -

- (A) any provision of this Law and the regulatory Laws, or
  - (B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and
- (ii) fulfilment of any of the applicable minimum criteria for licensing (whether in relation to the directed person or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the directed person),

in whatever form and manner and at whatever time the Commission may reasonably determine,

- (l) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, require that person to take all reasonable steps to procure the transfer of all or any of his depositors, investors or customers to another licensed institution acceptable to the Commission,
- (m) require the directed person to prepare consolidated accounts (in addition to any accounts required to be

prepared by virtue of the provisions of this Law),

- (n) require the directed person to appoint a compliance officer,
- (o) require the directed person to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission,
- (p) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (q) contain such ancillary, incidental and supplementary provision as the Commission may determine.

(5) A direction may be imposed on a former licensed institution only within a period of six years immediately following the date on which the former licensed institution ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of a majority of the members of the Commission.

However, for the avoidance of doubt, a direction imposed on a former licensed institution within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

(6) A direction may be imposed on a person or entity which has at any time been or been deemed to be a directed person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is

currently a directed person of that class or description, but only for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of a majority of the members of the Commission.

However, for the avoidance of doubt, a direction imposed on a person or entity which has at any time been or been deemed to be a directed person of a class or description specified in subsection (2) within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

This subsection does not apply to a former licensed institution.

(7) A direction shall remain in force until rescinded by the Commission, unless it is expressed to be of limited duration in which case it shall remain in force until -

- (a) the occurrence of such date, time, event or circumstance as may be specified in it,
- (b) such prohibitions, restrictions or requirements as may be so specified are complied with, or
- (c) rescinded by the Commission, if earlier.

For the avoidance of doubt, a direction imposed on a licensed institution or other person or entity of a class or description referred to in subsection (2) may remain in force after -

- (i) the date of revocation, suspension, expiration or surrender of the banking licence, or, as the case may be,
- (ii) the date on which that person or entity ceases to be a person or entity of that class or description.

(8) No direction under this section shall be given to a former licensed institution after it has ceased to have any liability in respect of deposits in respect of which it had a liability at a time when it held a banking licence; and any direction in force in respect of such an institution shall cease to have effect when the institution ceases to have any such liability.

(9) A person who contravenes any provision of a direction under this section is guilty of an offence.

(10) Where the directed person is a licensed institution, the contravention of a direction under this section -

- (a) is, whether or not constituting an offence under subsection (9), a ground for the suspension or revocation of the banking licence held by the directed person (see sections 28 and 29 of the Enforcement Powers Law), but
- (b) does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(11) In the event of failure by the directed person to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the directed person to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(12) In considering whether or not to impose, vary or rescind any direction the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 6 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for, or (as the case may be) to suspend or revoke, a banking licence.

(13) The Commission may publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the reputation of the Bailiwick as a finance centre.

The publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

(14) In this section the "**appropriate Court**" means -

- (a) the Court of Alderney, where the directed person is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the directed person is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

*Supervised roles*

**Supervised roles.**

12. (1) A person who, in relation to a body, is appointed as or otherwise becomes -

- (a) a shareholder controller,
- (b) an indirect controller,
- (c) a significant shareholder,

shall be deemed for the purposes of this Law to be the holder of an "**approved supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 14.

(2) A person who, in relation to a body, is appointed as or otherwise becomes –

- (a) a director,
- (b) a money laundering reporting officer,
- (c) a money laundering compliance officer,
- (d) a compliance officer,
- (e) a chief risk officer,
- (f) a person who, under the immediate authority of a director or chief executive, is responsible for maintaining the accounts or other records of the body, or
- (g) the holder of any other role in order to enable the body to fulfil the requirements of paragraph 4 of Schedule 2 (business to be directed by at least two individuals),

shall be deemed for the purposes of this Law to be the holder of a "**vett ed supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 15.

(3) A person who, in relation to a body, is appointed as or otherwise becomes -

- (a) a controller of a class or description referred to in paragraph (a) of the definition of "controller" in section 66 (but not including a person who falls into any other



category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection),

- (b) a nominated officer,
- (c) an auditor,
- (d) an "**other supervised manager**", that is to say, a person appointed otherwise than as a chief executive, to exercise, under the immediate authority of a director or partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership), day-to-day managerial functions in relation to deposit-taking business in respect of which the body is or will be licensed (but not including a person who falls into any other category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection),
- (e) a company secretary,

shall be deemed for the purposes of this Law to be the holder of a "**notified supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be notified to the Commission in accordance with the provisions of section 16.

(4) The Committee may by regulation amend this section so as to add to, remove or vary the positions, interests or roles included in each category of supervised role set out in subsections (1), (2) and (3).

(5) For the avoidance of doubt, the fact that a person is the holder of a supervised role does not of itself establish that he is a shadow director within the meaning of section 132 of the Companies (Guernsey) Law, 2008 or 163(1) of the Companies (Alderney) Law, 1994.

*Information as to institutions*

**List of, and information as to, licensed institutions.**

13. (1) The Commission shall establish and maintain, in such form as the Commission may determine, and 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 ("**the list**").

(2) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list.

(3) The list shall contain, in relation to each licensed institution -

- (a) the name of the licensed institution,
- (b) the addresses or principal places of business of the licensed institution in the Bailiwick,
- (c) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of -

- (i) any conditions imposed in respect of the banking licence,
  - (ii) any directions given to the licensed institution, or
  - (iii) any enforcement requirements imposed on the licensed institution or any other person in connection with the banking licence, and
- (d) such other particulars as the Commission may determine.

(4) The Commission shall publish the fact that a particular institution has ceased to hold a banking licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise, or has had its banking licence suspended.

(5) The Commission may also publish the fact that a particular person has been granted or refused a banking licence or that a particular person does not hold or has not held a banking licence.

(6) If at any time it appears to the Commission -

- (a) whether in consequence of -
  - (i) any grant, suspension, revocation, surrender or expiry of a banking licence, or

- (ii) any change in relation to a licensed institution,  
or

- (b) due to an error or for any other reason,

that the list or any particular contained in an entry in the list is inaccurate, the Commission shall make such addition, erasure or other alteration to the list or entry as the Commission considers necessary.

(7) The list and any publication under this section may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

*Notification of holding of approved and vetted supervised roles, etc*

**Notification of and objection to holders of approved supervised roles.**

14. (1) No person shall become the holder of an approved supervised role in respect of a licensed institution incorporated in the Bailiwick unless -

- (a) he or the licensed institution has notified the Commission in writing of the intention that he should become the holder of such a role, and
- (b) the Commission has notified him or the licensed institution in writing that there is no objection to his becoming the holder of such a role.

- (2) A notification under subsection (1) shall be given in such form

and manner as the Commission may require and shall be accompanied by –

- (a) such information and documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection, and
- (b) such fee as may be prescribed by regulations under section 7;

and following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require him to furnish such additional information or documents as the Commission may require for the purpose referred to in paragraph (a).

(3) The Commission may serve a notice of objection under this section if it is not satisfied –

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of an approved supervised role of the description in question in respect of the licensed institution,
- (b) that the interests of depositors or potential depositors of the licensed institution would not in any other manner be threatened by that person becoming the holder of an approved supervised role of that description, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as the holder of an approved supervised role of the description in question -

(i) the minimum criteria for licensing would continue to be fulfilled -

(A) in relation to that licensed institution, or

(B) in relation to any person who is or is to be the holder of a supervised role in respect of or employee of that licensed institution, or

(ii) if any of those criteria were not so fulfilled, that that person would be likely to undertake remedial action.

(4) A notice of objection under this section shall (without prejudice to the provisions of section 19) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

(5) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensed institution or class, description or category of person or licensed institution from the application of all or any of the requirements of subsection (1), either generally or in any particular case or class of case, and whether before or after the event in question.

**Notification of and objection to holders of vetted supervised roles.**

15. (1) No person shall become the holder of a vetted supervised role in respect of a licensed institution unless -

- (a) he or the licensed institution has notified the Commission in writing of the intention that he should become the holder of such a role, and
- (b) the Commission has notified him or the licensed institution in writing that there is no objection to his becoming the holder of such a role;

and, for the purposes of this subsection, the Commission's written notification that there is no objection to a person becoming the holder of such a role shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of compliance by that person or the licensed institution with the requirements of this subsection and any other requirements imposed under subsection (2) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person or the licensed institution.

(2) A notification under subsection (1) shall be given in such form and manner as the Commission may require and shall be accompanied by -

- (a) such information and documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection, and

- (b) such fee as may be prescribed by regulations under section 7;

and, following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require him to furnish such additional information or documents as the Commission may require for the purpose referred to in paragraph (a).

(3) The Commission may serve a notice of objection under this section if it is not satisfied -

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of a vetted supervised role of the description in question in respect of the licensed institution,
- (b) that the interests of depositors, investors or customers of or in the licensed institution would not in any other manner be threatened by that person becoming the holder of a vetted supervised role of that description, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as the holder of a vetted supervised role of the description in question -
  - (i) the minimum criteria for licensing would



continue to be fulfilled -

(A) in relation to that licensed institution,  
and

(B) in relation to any person who is or is to  
be the holder of a supervised role in  
respect of or employee of that licensed  
institution, or

(ii) if any of those criteria were not so fulfilled, that  
that person would be likely to undertake  
remedial action.

(4) A notice of objection under this section shall (without  
prejudice to the provisions of section 19) specify the matter mentioned in subsection  
(3) as to which the Commission is not satisfied.

(5) The Commission may, by notice in writing, and subject to such  
conditions as it thinks fit, exempt any person or licensed institution or class,  
description or category of person or licensed institution from the application of all or  
any of the requirements of subsection (1), either generally or in any particular case or  
class of case, and whether before or after the event in question.

**Notification of change of holder of supervised role.**

16. (1) Subject to the provisions of subsection (4), where any person  
becomes or ceases to be the holder of a supervised role in respect of a licensed  
institution, the licensed institution shall give notice in writing to the Commission of  
the fact.

(2) Subject as aforesaid, a notice required to be given under subsection (1) shall be given within a period of 14 days immediately following the day on which the person in question became or (as the case may be) ceased to be the holder of a supervised role.

(3) A notice required to be given under subsection (1) shall be given in such form and manner as the Commission may require and shall be accompanied by –

- (a) such information and documents as the Commission may require, and
- (b) such fee as may be prescribed by regulations under section 7;

and, following receipt of such notice from a licensed institution, the Commission may by notice in writing require it to furnish such additional information or documents as the Commission may require.

(4) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed institution or class, description or category of licensed institution from the application of all or any of the requirements of subsection (1), (2) or (3), either generally or in any particular case or class of case, and whether before or after the event in question.

(5) A licensed institution which fails to give notice in accordance with this section is guilty of an offence unless it shows that it was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a

case it is guilty of the offence if it fails to give such notice within a period of 14 days immediately following the day on which it became or ought reasonably to have become so aware.

**Notification of acquisition of additional voting power or reduction of voting power.**

17. (1) Where a person, alone or with associates -
- (a) is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of a body which is a licensed institution or (where that body is a company) of any other company of which that body is a subsidiary, and
  - (b) becomes entitled to exercise, or control the exercise of, whether in a single transaction or by a series of transactions over whatever period of time, such further percentage of that voting power as increases the total thereof to more than 50% (an “**additional controller holding**”),

he shall notify the Commission of the fact and obtain the Commission's written approval thereto.

- (2) Where a person, alone or with associates -
- (a) is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise) of a body which is a licensed

institution or (where that body is a company) of any other company of which that body is a subsidiary, and

- (b) ceases to be entitled to exercise, or control the exercise of, whether in a single transaction or by a series of transactions over whatever period of time, such percentage of that voting power as reduces the total thereof to 50% or less (a “**reduced controller holding**”),

he shall notify the Commission of the fact.

(3) A notification under subsection (1) or (2) shall be given in such form and manner as the Commission may require and shall be accompanied by -

- (a) such information and documents as in either case the Commission may require (for the purpose, in the case of notification under subsection (1), of deciding whether or not to give approval), and
- (b) such fee as may be prescribed by regulations under section 7;

and, following receipt of such notification from any person, the Commission may by notice in writing require him to furnish such additional information or documents as in either case the Commission may require (for the purpose, in the case of notification under subsection (1), referred to in paragraph (a)).

- (4) The Commission may serve a notice refusing approval for the

purposes of subsection (1) if it is not satisfied -

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to exercise, or control the exercise of, any voting power described in subsection (1) in respect of the licensed institution or any company of which the licensed institution is a subsidiary,
- (b) that the interests of depositors or potential depositors of the licensed institution would not in any other manner be threatened by that person becoming entitled to exercise, or control the exercise of, any such voting power, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as a person entitled to exercise, or control the exercise of, any such voting power -
  - (i) the minimum criteria for licensing would continue to be fulfilled -
    - (A) in relation to that licensed institution, or
    - (B) in relation to any person who is or is to be the holder of a supervised role in respect of or employee of that licensed institution, or

- (ii) if any of those criteria were not so fulfilled, that that person would be likely to undertake remedial action.

(5) A notice refusing approval for the purposes of subsection (1) shall (without prejudice to the provisions of section 19) specify the matter mentioned in subsection (4) as to which the Commission is not satisfied.

(6) For the purposes of subsection (1) the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of compliance by that person with the requirements of subsection (1) and any other requirements imposed under subsection (3) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice on the person concerned refusing its approval of the change.

(7) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensed institution or class, description or category of person or licensed institution from the application of all or any of the requirements of subsection (1) or (2), either generally or in any particular case or class of case, and whether before or after the event in question.

(8) A person who fails to give notice in accordance with subsection (1) or (2) is guilty of an offence unless he shows (for the avoidance of doubt, on a balance of probabilities) that he was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case he shall be guilty of the offence if he fails to give such notice within a period of 14 days

immediately following the day upon which he becomes or ought reasonably to have become so aware.

PART II  
APPEALS, OBTAINING OF DOCUMENTS, ACCOUNTS  
AND OTHER SUPERVISORY REQUIREMENTS

*Representations, notice of decisions  
and appeals*

**Representations concerning proposed decisions of Commission.**

18. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 21, other than a decision to serve a notice under section 15, 17 or 28, the procedure prescribed in this section shall be followed.

(2) The Commission shall serve on the person by whom, in the opinion of the Commission, the right of appeal would be exercisable if the Commission were to make the proposed decision (the "**person concerned**") a notice in writing -

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by -
  - (i) any order, restriction, condition, obligation,

requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

(ii) any notice proposed to be served,

(d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine,

(e) containing or accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 20(2)), and

(f) giving particulars of the right of appeal which would be exercisable under section 21 if the Commission were to make the proposed decision.

(3) Where -

(a) a ground for the proposed decision is that any of the minimum criteria for licensing are not or have not been



fulfilled, or may not be or may not have been fulfilled,  
in the case of any person, or

- (b) any proposed order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal which would be exercisable under section 21 if the Commission were to make the proposed decision.

(4) The Commission shall consider any representations made in response to a notice served under this section before giving further consideration to the proposed decision.

(5) The Commission may also, in performing its functions under the provisions of this Law or the regulatory Laws, and without limitation, have regard to -

- (a) any representations made in response to a notice served under this section, or
- (b) any failure or omission to make any such representations.

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the

interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of Commission.**

19. (1) Where the Commission (having taken into account, where appropriate, any representations made by the person concerned) makes a decision in respect of which a right of appeal is conferred by section 21, notice in writing of the decision -

- (a) shall be served by the Commission on the person concerned,
- (b) shall state the terms of and the grounds for the decision,
- (c) shall set out particulars of or be accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall contain or be accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the decision (but subject to the provisions

of section 20(2)), and

- (e) shall give particulars of the right of appeal conferred by section 21;

and "**the person concerned**" means the person by whom, in the opinion of the Commission, the right of appeal is exercisable.

(2) Where -

- (a) a ground for a decision notice of which is required to be served under subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) an order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 21.

**Disclosure of reasons for decisions of Commission.**

20. (1) When the Commission serves notice on a person -

- (a) under section 19(1) or (2) of a decision in respect of

which a right of appeal is conferred by section 21, or

- (b) under section 18(2) or (3) stating that the Commission is proposing to make such a decision,

the Commission shall, subject to the provisions of subsection (2), provide that person with a written statement of the reasons for the decision or proposed decision, as the case may be.

(2) Subsection (1) does not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities, whether in the Bailiwick or elsewhere, or
- (c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 21.

**Appeals to Royal Court against decisions of Commission.**

21. (1) A person aggrieved by a decision of the Commission -

- (a) under section 6(1), to refuse an application for a banking licence,
- (b) under section 8, to impose any condition in respect of a banking licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
- (c) to refuse to vary or rescind any condition so imposed,
- (d) under section 9 -
  - (i) not to allow the surrender of a banking licence to be withdrawn, or
  - (ii) not to give consent to the surrender of a banking licence,
- (e) under section 11(1) or 24(7), to give any direction or to vary or rescind any direction so given,
- (f) to refuse to vary or rescind any direction so given,
- (g) under section 29, to appoint or require the appointment of a skilled person,
- (h) under section 14 (notification of approved supervised roles), to serve a notice of objection,

- (i) under section 15 (notification of vetted supervised roles), to serve a notice of objection,
- (j) under section 17 (notification of acquisition of additional voting power or reduction of voting power) to serve a notice refusing approval for the purposes of that section,
- (k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons provided pursuant to section 20(1),
- (l) under section 28, to serve a notice under that section,
- (m) for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64 of the Enforcement Powers Law, or
- (n) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not

or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the person to whom the ground relates or whose removal or replacement is required may appeal to the Royal Court against the finding that there is a ground for the decision or, as the case may be, against the decision to require his removal or replacement.

- (3) The grounds of an appeal under this section 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) An appeal under this section shall be instituted –

- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(5) The Commission may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007<sup>d</sup>.

(6) On an appeal under this section the Royal Court may -

- (a) set the decision of the Commission aside and, if the Royal Court considers it appropriate to do so, remit the

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<sup>d</sup> O.R.C. No. IV of 2007.



matter to the Commission with such directions as the Royal Court thinks fit, or

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

(7) On an appeal under this section against a decision of the Commission described in -

- (a) subsection (1)(b),
- (b) subsection (1)(d)(i),
- (c) subsection (1)(e),
- (d) subsection (1)(g), or
- (e) subsection (1)(l),

the Royal Court may, upon the application of the appellant, and on such terms and conditions as the Royal Court thinks just, suspend or modify the operation of the decision in question pending the determination of the appeal.

This subsection is without prejudice to section 18(6).

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and, unless the Royal Court orders otherwise, the

information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing him.

**Appeals from Royal Court to Court of Appeal.**

22. (1) An appeal from a decision of the Royal Court made under the provisions of this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>e</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Restriction on successive challenges.**

23. (1) The Commission shall not (unless, in the opinion of the Commission, there are exceptional circumstances to justify doing so, the burden of proving which shall be on the applicant) proceed to consider an application by a person for the variation or revocation of an order or other decision to which this section applies where -

- (a) the application is a further application, that is to say, an application which relates to a person in respect of whom a previous application for the variation or revocation of that order or other decision has been received by the Commission,

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<sup>e</sup> Ordres en Conseil Vol. XVIII, p. 315; there are amendments not material to this enactment.

(b) in the opinion of the Commission, that further application discloses no significant change in any material circumstances concerning that person (the burden of proving that there has been such a significant change being on the applicant), and

(c) either -

(i) an appeal under section 21 relating to a previous such application in respect of that person has been commenced but not yet determined, or

(ii) within the period of 12 months immediately preceding receipt of that further application -

(A) a previous such application in respect of that person has been determined by the Commission, or

(B) an appeal under section 21 relating to a previous such application in respect of that person has been determined.

(2) The orders and other decisions to which this section applies are -

(a) a decision under section 8 to impose, vary or rescind

any condition in respect of a banking licence,

- (b) a decision to refuse to vary or rescind any such condition,
- (c) a decision under section 11(1) or 24(7) to give any direction or to vary or rescind any direction so given,
- (d) a decision to refuse to vary or rescind any direction so given,
- (e) a decision to appoint or require the appointment of a skilled person under section 29,
- (f) a decision to serve notice of objection under section 14 (objection to holders of approved supervised role),
- (g) a decision to serve notice of objection under section 15 (objection to holders of vetted supervised role),
- (h) a decision to serve notice refusing approval for the purposes of section 17 (notification of acquisition of additional voting power or reduction of voting power),
- (i) an order or other decision of a class or description specified by regulations of the Committee.

*Invitations to make deposits*

**Control of advertising.**

24. (1) The Commission may make rules in respect of the issue, form and content of deposit advertisements.

(2) Rules under this section may, without prejudice to the generality of subsection (1) or section 60 –

- (a) prohibit the issue of advertisements of any class or description (whether by reference to their contents, to the persons by whom they are issued or otherwise),
- (b) make provision as to the matters which must or which may not be included in deposit advertisements,
- (c) provide for exemptions from any prohibition or requirement imposed by the rules, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission.

(3) Subject to the provisions of subsection (4), a person who issues or causes or permits to be issued, in or from within the Bailiwick or (in the case of a Bailiwick body) in or from within any place whatsoever, an advertisement the issue of which is prohibited by rules under this section or which otherwise contravenes any provision of such rules is guilty of an offence.

(4) A person whose business it is to publish or arrange for the

publication of advertisements is not guilty of an offence under subsection (3) if he proves (for the avoidance of doubt, on a balance of probabilities) that –

- (a) he received the advertisement for publication in the ordinary course of his business,
- (b) the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control, and
- (c) he did not know and had no reason to believe that publication of the advertisement would constitute an offence.

(5) In this section a "**deposit advertisement**" means any advertisement containing –

- (a) an invitation to make a deposit, or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.

(6) For the purposes of this section –

- (a) an advertisement issued or caused or permitted to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused or permitted to be issued by him on every day

on which he causes or permits it to be displayed or exhibited,

(b) the issue of an advertisement inviting deposits with a person specified in the advertisement shall, unless the contrary is proved (for the avoidance of doubt, on a balance of probabilities), be presumed to have been caused by that person,

(c) an advertisement issued outside the Bailiwick shall be deemed to have been issued in the Bailiwick if it is directed to persons in the Bailiwick, or if it is made available to them otherwise than by means published, circulated, displayed, broadcast or transmitted principally outside the Bailiwick or principally for reception outside the Bailiwick.

(7) If the Commission considers that –

(a) any deposit advertisement issued or proposed to be issued is misleading, or

(b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of this section or any rule under it,

the Commission may give the advertiser a direction under this section.

(8) A direction under this section may (without limitation)

contain any or all of the following –

- (a) a prohibition on the issue of any advertisements or any advertisements of a specified class or description,
  - (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction,
  - (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified class or description,
  - (d) a requirement that any advertisements or any advertisements of a specified class or description shall be modified in a specified manner,
  - (e) such ancillary, incidental and supplementary provision as the Commission may determine.
- (9) A direction under this section –
- (a) may have immediate effect, and
  - (b) if given orally, shall be confirmed by the Commission in writing not later than the next business day.



(10) A direction under this section may be varied or rescinded by the Commission by notice in writing to the advertiser concerned.

(11) A direction under this section shall remain in force until rescinded by the Commission, unless it is expressed to be of limited duration in which case it shall remain in force until -

- (a) the occurrence of such date, time, event or circumstance as may be specified in it,
- (b) such prohibitions, restrictions or requirements as may be so specified are complied with, or
- (c) rescinded by the Commission, if earlier.

(12) In the event of failure by an advertiser to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the advertiser to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(13) The Commission may publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do so, the Commission shall

have regard to the interests of the public and the reputation of the Bailiwick as a finance centre.

The publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

(14) In this section the "**appropriate Court**" means -

- (a) the Court of Alderney, where the advertiser is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the advertiser is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(15) A person who issues or causes or permits to be issued, in the Bailiwick or elsewhere, an advertisement the issue of which is prohibited by a direction under this section or who otherwise contravenes any provision of such a direction is guilty of an offence.

(16) The provisions of this section are in addition to and not in derogation from the provisions of section 11.

#### **Unsolicited calls.**

25. (1) The Committee may make regulations in respect of the making of unsolicited calls on persons in the Bailiwick, or from the Bailiwick on persons elsewhere, with a view to procuring the making of deposits.

(2) Regulations under this section may, without prejudice to the generality of subsection (1) or section 60 –

- (a) prohibit the soliciting of deposits from, and the making of agreements with a view to the acceptance of deposits from, persons on whom unsolicited calls are made and the procuring of such persons to make deposits or to enter into such agreements,
- (b) specify persons by whom or circumstances in which unsolicited calls may be made,
- (c) require specified information to be disclosed to persons on whom unsolicited calls are made.

(3) A person who contravenes the provisions of any regulation under this section is guilty of an offence.

(4) In this section "**unsolicited call**" means a personal visit or oral communication made without express invitation.

*Notification of certain matters*

**Reports of large exposures.**

26. (1) A licensed institution other than one whose principal place of business is outside the Bailiwick shall make a report to the Commission if it proposes to enter into transactions relating to any one person which, either alone or together with previous transactions entered into by it in relation to that person, would result

in its being exposed to a risk of incurring losses in excess of 25% of its capital base.

(2) The provisions of subsection (1) apply also where the transactions relate to different persons who are connected in such a way that the financial soundness of any of them may affect the financial soundness of the others or the same factors may affect the financial soundness of them all.

(3) If a licensed institution to which subsection (1) applies has subsidiaries which are not licensed institutions, the Commission may by notice in writing to the licensed institution direct that the provisions of subsection (1) shall apply to it as if the transactions and capital base of the subsidiaries, or such of them as are specified in the notice, were included in those of the institution.

(4) The reports required to be made under the provisions of subsection (1) shall be made before the transactions are entered into or at such time (if any) after the transactions are entered into as may be specified by notice in writing given by the Commission to the institution; and such reports shall be made in such form and manner, and shall contain such information and particulars and shall be accompanied by such documents, as the Commission may require.

(5) An institution which fails to make a report in accordance with the provisions of this section is guilty of an offence unless it shows that it was not aware that the facts or circumstances were such as to require the making of the report; but in such a case the institution is guilty of the offence if it fails to make the report within a period of 7 days immediately following the day upon which it became or ought reasonably to have become so aware.

(6) The Commission, upon becoming aware (whether upon receipt of a report under subsection (1) or otherwise) –

(a) of a proposal to enter into a transaction described in subsection (1),

(b) that such a transaction has been entered into,

may require the institution concerned and any relevant subsidiary thereof to make such arrangements within such time as may appear to the Commission to be necessary or desirable for the protection of the institution's capital base.

(7) An arrangement under subsection (6) shall be notified in writing by the Commission to the institution concerned; and the institution shall comply with the arrangement in all respects.

(8) Any question as to whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Commission or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.

(9) For the purposes of this section, the capital base of an institution (or, in a case within subsection (3), of an institution and its relevant subsidiaries) and the value of that capital base at any time may, whenever the Commission considers it necessary to do so, be determined by the Commission and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Commission after consultation with the institution concerned and in accordance with principles

published by the Commission.

Where the Commission has made no determination under the provisions of this subsection in respect of an institution the capital base of the institution and the value of that capital base shall be determined in accordance with rules or guidance of the Commission in respect of large exposures and the risk thereof, capital base and related matters.

(10) The principles referred to in subsections (8) and (9) may make different provisions for different cases; and those referred to in subsection (8) may in particular exclude from consideration, in whole or in part, risks resulting from transactions of a particular class or description or entered into in particular circumstances or with persons of particular classes or descriptions.

(11) The Committee may by regulation –

- (a) amend subsection (1) so as to substitute, for the percentage for the time being specified therein, some other percentage,
- (b) make provision for determining for the purposes of this section whether a transaction entered into by an institution relates to any person,
- (c) make provision in respect of the transactions and risks to be taken into account for the purposes of this section, and
- (d) make such provision as it thinks fit for the purpose of

carrying this section into effect.

*Powers to obtain information  
and skilled persons, etc*

**Persons to whom section 28 applies.**

27. (1) In section 28 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensed institution,
- (b) an applicant for a banking licence,
- (c) a former licensed institution, but subject to the provisions of subsection (2),
- (d) a person carrying on any class or description of deposit-taking business -
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of deposit-taking business,

- (e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of deposit-taking business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (f) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,
- (g) where a person (person A) who is a relevant person by virtue of paragraph (f) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, person A,
- (h) an employee of, or a person who is or has at any time been directly or indirectly employed (whether or not under a contract of employment) by, a relevant person specified in any other paragraph of this subsection,
- (i) any person or entity -
  - (i) which has or has at any time had any direct or indirect proprietary, financial, economic or other interest in or connection with a relevant person specified in any other paragraph of this subsection, or



- (ii) in or with which a relevant person specified in any other paragraph of this subsection has or has at any time had any such interest or connection,

but subject to the provisions of subsection (5),

- (j) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (k) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (l) a special purpose vehicle or ancillary vehicle of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (m) a person who is a significant shareholder of a relevant person specified in any other paragraph of this subsection, where that relevant person is a company,
- (n) a company of which the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection is a controller, but subject to the provisions of subsection (5),

(o) a person who performs any function for or on behalf of

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(i) a relevant person specified in any other paragraph of this subsection, or

(ii) a person acting for or on behalf of a relevant person so specified,

in relation to deposit-taking business, including, without limitation, a person who is an auditor of a relevant person so specified, or

(p) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(2) The provisions of section 28 apply in relation to a former licensed institution only for a period of six years immediately following the date on which it ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a former licensed institution within that six year period, they may continue to be exercised in respect of it after the expiration of that period.

(3) The provisions of section 28 apply in relation to a person or

entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section as they apply in relation to a person or entity which is currently a relevant person of that class or description, but only -

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be a relevant person of that class or description, and
- (b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a relevant person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensed institution.

(4) For the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a licensed institution or other person or entity of a class or description of relevant person referred to in subsection (1), the powers may continue to be exercised in respect of them after -

- (a) the date of revocation, suspension, expiration or surrender of their banking licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be a relevant person of that class or description.

(5) The powers conferred by section 28 may be exercised in relation to a person or entity referred to in subsection (1)(i), an associated party referred to in subsection (1)(j), a group entity referred to in subsection (1)(k), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(l) or a company referred to in subsection (1)(n) only -

- (a) where it appears necessary or desirable to the Commission to do so -
  - (i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or
  - (ii) for the purpose of the performance of its functions, and
- (b) with the prior written authority of not less than two ordinary members of the Commission.

**Power to require information and production of documents.**

28. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 27 require him to furnish the

Commission or a person duly appointed by the Commission in that behalf (an "**appointed person**"), on any occasion or at times or intervals, and in respect of the periods, at the place, and in the form or manner, specified by the Commission or appointed person, with such information and documents, or information and documents of such class or description, as the Commission or (on producing, if required to do so, evidence of his authority) the appointed person may reasonably require for the purpose of the performance of the Commission's functions, being, if the Commission or the appointed person so requires, information and documents verified in such manner as the Commission or appointed person may reasonably specify.

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

- (a) that a requirement to furnish information or documents under subsection (1) may be imposed on, or in relation to, a particular relevant person, all relevant persons or any class or description of relevant persons,
- (b) that a requirement as to the manner in which such information or documents are to be verified may direct their annexation to any accounts, and that they be reported upon by the auditor of those accounts in such manner as the Commission may specify.

(3) Where by virtue of subsection (1) the Commission or an appointed person has power to require the production of any information or documents from a relevant person, the Commission or that appointed person has the like power to require production of the information or documents from any person who appears to the Commission or that appointed person to be in possession of them.

(4) Any power conferred by or under the provisions of this section to require a person to produce any documents includes power –

(a) if the documents are produced –

(i) to take copies of them or extracts from them,  
and

(ii) to require –

(A) the person who was required to  
produce them, or

(B) any other person who is a present or  
past holder of a supervised role in  
respect of, or is or was at any time an  
employee of, or directly or indirectly  
employed (whether or not under a  
contract of employment) by, that  
person,

to provide an explanation of any of them,

(b) if any of the documents are not produced, to require  
the person who was required to produce them to state,  
to the best of his knowledge and belief, where they are.

(5) A person on whom a requirement is imposed by or under the

provisions of this section shall, if so required by the Commission, provide a statement or declaration, in such form and manner as the Commission may require, that any information and documents furnished by him pursuant to the requirement are to the best of his knowledge accurate, complete and correct, whether for the purpose of supporting the subsequent use of the information or documents in civil, criminal or administrative proceedings in the Bailiwick or elsewhere or for any other purpose.

(6) A statement made by a person in response to a requirement imposed by or under this section -

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except -

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) an offence under subsection (11) of this section or section 109 of the Enforcement Powers Law,

(B) some other offence where, in giving evidence, he makes a statement

inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(7) A requirement imposed by or under the provisions of this section has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a requirement.

(8) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(9) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to his lien.

(10) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under the provisions of this section is guilty of an offence.

**Appointment of skilled persons.**



29. (1) The Commission may, in relation to an inspected person within the meaning of subsection (4), if it considers it necessary or desirable to do so

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(a) in the interests of -

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre, or

(b) for the purpose of the performance of its functions,

appoint, or require the inspected person to appoint, one or more competent persons ("**skilled persons**") to investigate and report to the Commission on -

(i) the nature, conduct or state of the business of the inspected person or any particular aspect of that business, or

(ii) the ownership or control of the inspected person,

and the Commission shall give notice in writing of the appointment to the inspected person.

(2) A report of a skilled person under this section shall be in such form as may be specified in the notice of the appointment referred to in subsection (1) or as the Commission may otherwise determine.

(3) A person appointed as a skilled person -

- (a) must, if appointed by the inspected person, be nominated or approved by the Commission, and
- (b) must appear to the Commission to have the qualifications, skill and resources necessary to enable him to conduct the investigation, and to make the report, in question.

(4) In this section an "**inspected person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensed institution,
- (b) an applicant for a banking licence,
- (c) a former licensed institution, but subject to the provisions of subsection (5),
- (d) a person carrying on any class or description of deposit-taking business -
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the

provisions of this Law as not to require  
licensing hereunder,

in respect of that class or description of business,

- (e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of deposit-taking business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (f) an associated party of an inspected person specified in any other paragraph of this subsection, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (g) a person who is the holder of a supervised role in respect of an inspected person specified in any other paragraph of this subsection,
- (h) a person who performs any function for or on behalf of  
-
  - (i) an inspected person specified in any other paragraph of this subsection, or
  - (ii) a person acting for or on behalf of an inspected person so specified,

in relation to deposit-taking business, including, without limitation, a person who is an auditor of an inspected person so specified, or

- (i) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(5) The provisions of this section apply in relation to a former licensed institution only for a period of six years immediately following the date on which it ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a former licensed institution within that six year period, they may continue to be exercised in respect of it after the expiration of that period.

(6) The provisions of this section apply in relation to a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section as they apply in relation to a person or entity which is currently an inspected person of that class or description, but only -

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be an inspected person of that class or description, and

- (b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be an inspected person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensed institution.

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensed institution or other person or entity of a class or description of inspected person referred to in subsection (4), the powers may continue to be exercised in respect of them after -

- (a) the date of revocation, suspension, expiration or surrender of their banking licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be an inspected person of that class or description.

(8) An inspected person being investigated under this section and any person described in subsection (9) -

- (a) shall produce to a skilled person, at such time and place and in such form and manner as the skilled person may require, all documents in his custody or power relating to the inspected person; and the skilled person may take copies of or extracts from any documents produced to him under this paragraph,
- (b) shall attend before a skilled person at such time and place as the skilled person may require and answer such questions and give such explanations as the skilled person may put to or require of him in relation to the inspected person, and
- (c) otherwise shall give a skilled person all assistance in connection with the investigation which he is reasonably able to give.

(9) The persons referred to in subsection (8) are -

- (a) a person who is or has been the holder of a supervised role in respect of, or an employee, partner (or fellow member, in the case of a limited liability partnership), agent, banker, auditor, actuary, advocate or other legal adviser of, an inspected person being investigated under this section,

- (b) a person appointed as a skilled person pursuant to the provisions of the regulatory Laws in respect of such an inspected person, and
- (c) a person appointed to make a report under section 5(5) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) of the Insurance Managers and Intermediaries Law in respect of such an inspected person.

(10) A skilled person shall, if so required, produce evidence of his authority.

(11) A person who without reasonable excuse -

- (a) contravenes any provision of subsection (8), or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a skilled person exercising or purporting to exercise any power conferred by this section,

is guilty of an offence.

(12) A statement made by a person in response to a requirement imposed by or under this section -

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except -
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
  - (ii) in proceedings for -
    - (A) an offence under subsection (11) or section 109(1) of the Enforcement Powers Law (but only in relation to a requirement imposed by or under this section),
    - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
    - (C) perjury, or
    - (D) perverting the course of justice.



(13) A requirement imposed by or under the provisions of this section has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a requirement.

(14) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(15) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to his lien.

(16) Subject to the provisions of subsection (17), the costs, fees and expenses of an investigation and report under this section shall be met by the inspected person the business, ownership or control of which is being investigated under subsection (1); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that inspected person as a civil debt.

(17) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) may be recovered by the Commission from an inspected person as a civil debt except where and to the extent that the court is satisfied that -

- (a) the sum is not reasonable in amount or was not reasonably incurred, or

- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

For the avoidance of doubt, the burden of establishing the matters referred to in paragraphs (a) and (b) lie on the person from whom recovery is sought.

(18) No liability is incurred by a skilled person in respect of anything done or omitted to be done after the commencement of this Law in connection with the preparation of a report under, or otherwise for the purposes of, this section except to the extent that the liability arises from his own fraud, wilful misconduct or gross negligence.

**Falsification, etc, of documents during investigation.**

30. A person upon whom a requirement is imposed by or under the provisions of section 28 or 29 or who knows or has reasonable grounds to suspect –

- (a) that such a requirement is likely to be imposed on him,  
or
- (b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 28 or 29,

and who removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect –

- (i) are or would be specified in such a requirement, or
- (ii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless he proves (for the avoidance of doubt, on a balance of probabilities) that he had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from persons carrying out such an inquiry or investigation.

**Retention of documents.**

31. (1) The following persons or entities -

- (a) a licensed institution,
- (b) a person carrying on any class or description of deposit-taking business -
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of deposit-taking business,

- (c) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee,

must retain (and make arrangements for the retention, in the event of their dissolution, winding up, cessation or deregistration, of) all documents and information which they (or any person or entity acting on their behalf pursuant to any such arrangements) were required to make, keep or maintain by or under the provisions of this Law or any other enactment for a period of six years immediately following the date on which they ceased to be -

- (i) a licensed institution, or
- (ii) a person of any other class or description specified in any paragraph of this subsection,

as the case may be.

(2) The period of six years specified in subsection (1) may be extended by the Commission on any number of occasions for further periods each of which may not exceed three years by notice in writing served on the person in question within the six year period or, as the case may be, within the current period of extension.

(3) The provisions of this section are without prejudice to any other obligation imposed or arising by or under any enactment.

(4) The Commission may make or issue rules, guidance or policies for the purpose of carrying this section into effect.

(5) Rules, guidance or policies under subsection (4) may, without limitation, make provision in respect of -

- (a) the form in which documents and information are to be retained and made available,
- (b) the classes or descriptions of document or information to which this section does, or does not, apply,
- (c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1) must make in respect of the retention of documents and information in the event of their dissolution, winding up, cessation or deregistration, and
- (d) the duties and obligations of persons who, pursuant to arrangements described in subsection (1), retain or have possession or control of the documents and information of a person or entity of a class or description specified in any paragraph of subsection (1) which has been dissolved, wound up or deregistered or which has otherwise ceased.

(6) Rules under this section may provide that this section shall have effect in respect of any person or entity or class or description of person or

entity subject to such exceptions, adaptations and modifications as may be specified in the rules.

*Accounts and auditors*

**Audited accounts to be available for inspection.**

32. (1) A licensed institution shall make available for inspection by any person on request a copy (which may be in electronic form) of its most recent audited accounts including the auditors' report on the accounts.

(2) The Commission may (without prejudice to the provisions of section 33) make rules prescribing the form in which the accounts and reports described in subsection (1) are to be, the information and particulars to be contained in them and the times or intervals at which and periods in respect of which they are to be drawn up; and rules under this subsection may also make provision in respect of the delivery of such accounts and reports to such persons and at such times or intervals and at such places as may be prescribed.

(3) The Commission may in its absolute discretion, by notice in writing and subject to such conditions as it thinks fit, and either generally or in any particular case or class of case, and whether before or after the event in question, exempt any licensed institution or class or description of licensed institution from the application of all or any of the requirements of subsection (1) and of any rules under subsection (2) and instead require the institution to make available for inspection by any person on request an abridged version of the accounts or reports described in subsection (1) in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

- (4) A licensed institution which contravenes –
  - (a) any provision of this section or of any rules made under it, or
  - (b) any requirement imposed by or under any such provision,

is guilty of an offence, but only, in the case of rules, to the extent that the rules expressly so provide following consultation with Her Majesty's Procureur.

**Rules as to accounts, etc.**

- 33. (1) The Commission may make rules prescribing –
  - (a) the preparation, keeping, maintenance, submission to the Commission and publication of accounting records,
  - (b) the form in which –
    - (i) a licensed institution's accounting records, and
    - (ii) the auditor's report on the licensed institution's accounts,

are to be,

- (c) the information and particulars to be contained in accounting records and auditors' reports, and the documents to be appended to or accompany them,

(d) the occasions, times, intervals or places at which, the periods in respect of which and the form and manner in which -

(i) accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection, and

(ii) any other accounting records, auditors' reports and documents -

(A) of a class or description specified in the rules, or

(B) required by the Commission in the interests of the public or the reputation of the Bailiwick as a finance centre,

being records, reports or documents prepared, kept or maintained otherwise than in respect of a licensed institution (including, without limitation, records, reports or documents prepared, kept or maintained in respect of a holder of a supervised role, officer, employee, auditor, associated company, ancillary vehicle or special purpose vehicle or any other class or description of person or entity specified in the rules),



are to be drawn up, furnished and delivered, and

- (e) the persons to whom accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection are to be furnished or delivered, and the times, intervals and places of such furnishing or delivery.

(2) Without prejudice to the provisions of this section or any rules made under it, a licensed institution or other person to whom those provisions apply shall furnish to the Commission upon request any accounting records, auditors' reports and other documents required to be kept by or under those provisions.

(3) In this section "**accounting records**" includes accounts, profit and loss accounts, statements of comprehensive income, statements of account, consolidated accounts, balance sheets, statements of financial position, reports, financial records and other associated records and documents.

(4) The Commission may, by notice in writing, and subject to such conditions as it thinks fit -

- (a) exempt any licensed institution or other person or class or description of licensed institution or person from the application of all or any of the requirements of this section or any rules made under it, either generally or in any particular case or class of case, and whether before or after the event in question, and

- (b) without prejudice to the provisions of paragraph (a), require a licensed institution or other person, instead of compliance with the requirements of this section or any rules made under it, to furnish to the Commission upon request an abridged version of any accounting records required to be kept by or under the provisions of this section or the rules in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

(5) A licensed institution or other person who contravenes –

- (a) any provision of this section or of any rules made under it, or
- (b) any requirement imposed by or under this section or any rules made under it,

is guilty of an offence, but only, in the case of rules, to the extent that the rules expressly so provide following consultation with Her Majesty's Procureur.

(5) The provisions of this section are in addition to and not in derogation from the provisions of section 32.

**Notification in respect of auditors.**

34. (1) A licensed institution shall appoint auditors as auditors to the licensed institution; and whenever an appointment under this section comes to an end the licensed institution shall, as soon as is reasonably practicable and in any case

within a period of 28 days after the day on which that appointment came to an end (or such longer period as the Commission may, in its absolute discretion, by written notice allow) make a fresh appointment of auditors as auditors to the licensed institution.

(2) Without prejudice to the provisions of section 16, if an appointment as auditor under this section comes to an end the licensed institution (if incorporated in the Bailiwick) shall immediately give the Commission written notice and explanation of the fact, giving the name of the person whose appointment has come to an end.

(3) Without prejudice to the provisions of section 16, a licensed institution incorporated in the Bailiwick shall immediately give written notice and explanation to the Commission –

- (a) if the institution proposes to give special notice to its members of a resolution removing an auditor before the expiration of his term of office,
- (b) if the institution gives notice to its members of a resolution replacing an auditor at the expiration of his term of office, or
- (c) if a person ceases to be an auditor of the institution otherwise than pursuant to such a resolution.

(4) An auditor of a licensed institution incorporated in the Bailiwick appointed for the purposes of or in accordance with the provisions of any enactment in force in the Bailiwick or any part thereof, including this Law, shall

immediately give written notice and explanation to the Commission if he –

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of his term of office, or
- (b) signs a qualified audit report on the accounts of the licensed institution,

and a notice under paragraph (a) shall contain -

- (i) a statement to the effect that there are no circumstances connected with his ceasing to be auditor which he considers should be brought to the attention of the Commission, or
- (ii) if there are any such circumstances, a report of them.

(5) The provisions of subsections (3) and (4) apply in relation to a former licensed institution as they apply in relation to a licensed institution, but only, subject to the provisions of subsection (6), for a period of six years immediately following the date on which the former licensed institution ceased to hold a banking licence.

(6) Where an auditor of a former licensed institution appointed as mentioned in subsection (4) –

- (a) resigns or is removed before, or is not reappointed or

does not seek re-appointment upon, the expiration of his term of office, or

- (b) signs a qualified audit report on the accounts of the former licensed institution,

by reason of any fraud of –

- (i) the former licensed institution, or
- (ii) any holder of a supervised role in respect of it or any of its employees,

perpetrated at a time when it held a banking licence, the time limit of six years specified in subsection (5) does not apply.

(7) A licensed institution or former licensed institution which contravenes any provision of subsection (1), (2) or (3) is guilty of an offence.

(8) An auditor who without reasonable excuse contravenes any provision of subsection (4) is guilty of an offence.

(9) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed institution, former licensed institution or auditor or class, description or category of licensed institution, former licensed institution or auditor from the application of all or any of the requirements of subsection (1), (2), (3) or (4), either generally or in any particular case or class of case, and whether before or after the circumstance, event or occasion in question.

**Communications by auditors, etc, to Commission.**

35. (1) No duty to which –

- (a) an auditor, or
- (b) a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29,

is subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(2) It is the duty of –

- (a) an auditor, or
- (b) a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29,

to communicate to the Commission matters to which this section applies and which the auditor or that person has reasonable cause to believe is, or is likely to be, of material significance for determining either -

- (i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on any deposit-taking business or to be the holder of a

supervised role in respect of a licensed institution, or

- (ii) whether the Commission should perform its functions under the provisions of this Law or any other enactment for the purposes of the protection of the public or the reputation of the Bailiwick as a finance centre.

(3) In relation to an auditor, this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of –

- (a) a licensed institution,
- (b) an associated party of the licensed institution, or
- (c) where the licensed institution is a partnership or limited liability partnership, any company of which a partner in that partnership or a member of that limited liability partnership is a controller.

(4) In relation to a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29, this section applies to any matter of which he becomes aware in his capacity as the person appointed to make the report or as a skilled person and which relates to the business or affairs of –

- (a) the person or entity in relation to which his report is

made,

- (b) any associated party of that person or entity, or
- (c) where that person or entity is a partnership or limited liability partnership, any company of which a partner in that partnership or a member of that limited liability partnership is a controller.

(5) If it appears to the Commission, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, that any accountants or class thereof or other persons of a class or description referred to in subsection (1)(a) or (b) are not subject to satisfactory rules or guidance made or issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1), the Commission may, after consultation as aforesaid in relation to the views of such bodies as appear to the Commission to represent the interests of accountants or other such persons and licensed institutions, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

(6) This section applies in relation to the auditor of a former licensed institution as it applies in relation to the auditor of a licensed institution.

**Power to request meetings with auditors, actuaries, etc.**

36. (1) The Commission may, whenever it thinks fit, and –



- (a) with a view to the performance of its functions, or
- (b) if it considers it necessary or desirable to do so in the interests of the public or the reputation of the Bailiwick as a finance centre,

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, associated parties or officers of, or holders of supervised roles in respect of, a licensed institution or former licensed institution (the “**client**”) at which the Commission may discuss any aspect of the operation, regulation or licensing of the client.

(2) In the course of a meeting under this section the Commission or any person acting for and on behalf of the Commission -

- (a) may request the provision of such information and documents, in such form, and
- (b) may put such questions and request such explanations,

as the Commission or that person thinks fit, being information, documents, questions and explanations relevant to the purposes mentioned in subsection (1)(a) and (b).

(3) Where a client or any person upon whom a notice is served under subsection (1) fails to co-operate with the Commission or any person acting for and on behalf of the Commission when performing or attempting to perform their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to

provide an authority, in whatever form reasonably required, to any persons in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question or give any explanation, or otherwise), that failure may be taken into account by the Commission in performing its functions.

(4) For the avoidance of doubt, a meeting (and all ancillary, incidental and supplementary communications and proceedings) may be requested, arranged and conducted, and other requests and requirements may be made or imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

(5) The Commission may direct a person to whom a notice is given under subsection (1) that he must not, for such period (which may be indefinite) as the Commission may specify -

- (a) inform, or cause or permit to be informed, the client -
  - (i) that the notice has been given, or
  - (ii) of the fact or content of a meeting requested or other request made under the provisions of this section or of anything said, disclosed or otherwise done or omitted to be done pursuant to such a meeting or request, or
- (b) disclose, or cause or permit to be disclosed, to any person (including the client) any information or matter which is likely to prejudice -

- (i) the inquiry to which the notice relates, or
- (ii) the performance by the Commission of its functions,

and a person who fails to comply with such a direction is guilty of an offence unless he can show (for the avoidance of doubt, on a balance of probabilities) -

- (A) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself and by any person under his control, or
- (B) in the case of an offence under paragraph (b), that he did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance by the Commission of its functions.

(6) A request made under the provisions of this section has effect and may be acted upon notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a request.

(7) Nothing in the provisions of this section compels the

production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(8) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to his lien.

(9) Any obligation imposed by statute, contract or otherwise requiring a person to whom a notice is given under subsection (1) -

(a) to inform or seek the permission of another person before -

(i) agreeing to, arranging or conducting a meeting pursuant to the provisions of this section, or

(ii) complying with a request made under the provisions of this section, or

(b) to inform another person of -

(i) the fact or content of such a meeting or request, or

(ii) anything said, disclosed or otherwise done or omitted to be done pursuant to such a meeting or request,

is of no effect.

(10) A statement made by a person in response to a request made under this section -

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except -

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) an offence under section 109(1) of the Enforcement Powers Law (but only in relation to a request made under this section),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(11) The provisions of this section -

- (a) are in addition to and not in derogation from the other provisions of this Law, and
- (b) for the avoidance of doubt, are without prejudice to the power of the Commission to request, arrange and conduct meetings with any person described in subsection (1) and the client or any other person.

*Making of rules, codes and guidance*

**Rules of the Commission.**

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

**Particular matters that may be covered by rules.**

38. Rules under section 37 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 8),

(b) prescribe the manner in which licensed institutions must conduct, govern, manage and operate their business, and this includes, without limitation, matters relating to -

(i) corporate governance,

(ii) internal controls and reporting,

(iii) depositor assets and monies, including, without limitation -

(A) the holding (whether on trust or on any other basis or in any other manner or capacity), management, payment, attribution, separation and safeguarding thereof, including the holding thereof on trust, and

(B) in the event of insolvency, liquidation, dissolution, winding up, cessation, deregistration, receivership, administration or administration management, the priorities and preferences to be accorded by law thereto,

(iv) the outsourcing of functions,

- (v) the provision of particulars in respect of deposit-taking business being carried on,
  - (vi) insurance cover of any class or description,
  - (vii) financial resources,
  - (viii) business assets,
  - (ix) requirements in respect of capital, capital resources, funds and liquidity, and
  - (x) the calculation, maintenance and approval of anything described in the above subparagraphs,
- (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, investors 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 -
  - (i) require licensed institutions to impose and enforce restrictions on the activities carried on by their servants and agents,
  - (ii) enable or require information obtained in the course of carrying on any class or description of the deposit-taking business of a licensed institution to be withheld from persons involved in carrying on any other class or description of the deposit-taking business of that licensed institution,
- (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, investors 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 -
- (i) other licensed institutions,
  - (ii) other persons carrying on deposit-taking business,
  - (iii) other persons or bodies holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
  - (iv) depositors, investors, customers and potential depositors, investors and customers of persons

described in subparagraphs (i) to (iii), and

- (v) the Commission,
- (n) impose on licensed institutions obligations to ensure compliance by them, their servants and agents and other persons of a class or description prescribed by the rules with the provisions of this Law,
- (o) make provision otherwise as to the licensing, resources and duties of licensed institutions, and
- (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, banking licences and other relevant documents, including (without limitation) provision –
  - (i) prescribing the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,
  - (ii) prescribing the form and content of relevant documents,
  - (iii) as to the renewal of relevant documents,
  - (iv) prescribing minimum requirements (as to capital and liquidity, solvency, management,

staff, resources and any other matter referred to in paragraph (b)) to be attained by an applicant for a relevant document,

and in this paragraph "**relevant document**" means a licence, authorisation, registration, permission, consent, exemption, dispensation, concession, authority, declaration, statement, notice, direction or other document sought from or granted or given by the Commission under the provisions of or for the purposes of this Law.

**Rules as to annual return.**

39. (1) The Commission may make rules requiring the submission by licensed institutions to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

(2) The annual return shall contain such information and shall be accompanied by such documents as may be prescribed, being information and documents considered by the Commission to be necessary –

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism,

(c) in the interests of -

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 57).

(4) The information and documents that rules under this section may require to be submitted to the Commission include, without limitation –

(a) audited accounts and auditors' management letters (or confirmation that the auditors have confirmed that no auditors' management letter is required to be issued),

(b) an up to date business plan,

(c) a 12 month financial forecast,

(d) a certificate signed by a prescribed person confirming -

(i) compliance throughout the period covered by the annual return with the provisions of this Law, the appointed Laws and any other

prescribed enactment,

(ii) that accounts have been prepared and deposited in accordance with the provisions of this Law,

(e) the names of and other prescribed particulars in respect of the holders of supervised roles in respect of, or the officers or employees of, a licensed institution,

(f) the number of staff employed,

(g) the number of depositors, investors or customers, whether in total or whether in respect of different classes or descriptions of deposit-taking business,

(h) the licensed institution's estimate of the value of assets held by it or on its behalf,

(i) such other information and documents as may be prescribed or as the Commission may determine.

(5) Rules under this section may, without limitation, make provision in relation to –

(a) the furnishing, keeping and obtaining, by persons of prescribed descriptions, of information, documents and records of prescribed classes or descriptions,

- (b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,
- (c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,
- (d) the provision of reports, in such form as may be prescribed or as the Commission may determine, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,
- (e) the payment of any fees prescribed by regulations under section 7 in respect of the submission of annual returns,
- (f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,
- (g) the service of notices,
- (h) the submission of a single or composite return for licensed institutions which also hold a licence under



any of the regulatory Laws.

- (6) In this section "**prescribed**" means prescribed by the rules.

**Rules as to annual review.**

40. (1) Without prejudice to any other provision of this Law, a licensed institution shall review, in accordance with the provisions of rules made by the Commission under this section, the business carried on in or from within the Bailiwick or elsewhere by -

- (a) the institution,
- (b) any associated party or group entity thereof,
- (c) any undertaking established by the institution (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
- (d) any person or entity in or with which the institution has or has at any time had any direct or indirect proprietary, financial, economic or other interest or connection,

not less than once in every financial year (but subject to the provisions of the rules).

(2) Rules of the Commission under this section may without limitation require a review under this section of or in respect of the following matters -

- (a) the institution's individual loans, asset classification and loss provisioning (including on and off balance sheet exposures),
- (b) whether the institution has in place control systems which are effective to ensure –
  - (i) that all returns and other documents required by or under the provisions of this Law to be submitted to the Commission are duly submitted, and
  - (ii) that any inaccuracies in any such returns and other documents are identified, corrected and reported to the Commission expeditiously,
- (c) whether the institution's financial record keeping systems and data systems are reliable,
- (d) whether any activity has been entered into in the course of the institution's business in respect of which no holder of a supervised role in respect of the institution has a sound knowledge,
- (e) the responsibilities and conduct of the institution's board of directors with respect to corporate governance principles,
- (f) whether there has been effective control by the

institution's board of directors over every aspect of risk management,

- (g) the institution's control environment,
- (h) compliance by the institution and the holders of supervised roles in respect of, and officers and employees of, the institution with -
  - (i) the provisions of this Law, the appointed Laws and any other enactment prescribed by the rules, and
  - (ii) the minimum criteria for licensing.
- (i) any other matters considered by the Commission to be necessary –
  - (i) for the purposes of enabling the Commission to perform its functions, or
  - (ii) in the interests of -
    - (A) the public, or
    - (B) the reputation of the Bailiwick as a finance centre.
- (3) Rules of the Commission under this section may also, without

limitation –

- (a) specify the maximum amount of time that may elapse between the completion of any two successive annual reviews,
- (b) require a licensed institution, either immediately or within such period as may be prescribed or as the Commission may determine -
  - (i) to notify the Commission that it has completed the annual review,
  - (ii) if requested, to provide the Commission with a copy of the annual review, and
  - (iii) if an annual review reveals shortcomings or deficiencies in respect of any of the matters set out in the rules -
    - (A) to report the shortcomings or deficiencies to the Commission together with details of the steps it proposes to take to remedy the position, and
    - (B) to provide the Commission with such documents, information and other evidence and verification as the Commission may require for the

purpose of establishing that such steps  
have been taken,

- (c) require the annual review to be made in such form and manner and to contain or be accompanied by such information and documents as may be prescribed or as the Commission may determine,
- (d) specify the dates, times, intervals, occasions, events or circumstances on, at, in or within which, and periods in respect of which, the annual review is to be made, and
- (e) make provision in relation to any other matter in respect of which rules may be made under section 37 or 39.

(5) In this section –

**"annual review"** means the review required to be carried out by a licensed institution by or under the provisions of this section,

**"financial year"** means the period covered by a licensed institution's accounts in respect of its business,

**"prescribed"** means prescribed by the rules.

**Codes of practice and guidance.**

41. (1) The Commission, after consultation with –

- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and
- (b) such other persons as appear to the Commission to be appropriate,

may (without prejudice to any other power conferred by the provisions of this Law or the regulatory Laws as to the making of codes or guidance) issue such codes of practice and/or such guidance as the Commission thinks necessary –

- (i) for the purpose of providing clarification or guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to depositor, investor and customer protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by

-

- (A) persons carrying on business regulated by this Law, or
- (B) any other persons to whom the code or guidance applies,

- (ii) generally for the purposes of providing clarification or guidance in respect of the provisions of or for the purposes of, or in connection with the administration, implementation or enforcement of, this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules may be made under section 24, 32, 33, 37, 39 or 40.

(2) The Commission may, after consultation as mentioned in subsection (1), amend the whole or any part of a code of practice or guidance issued under this section and issue that amended code or guidance.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of a provision of a code of practice or guidance issued under this section does not of itself render him liable to any criminal proceedings; but –

- (a) the Commission, in the performance of its functions, may take the provision of the code or guidance and the contravention thereof into account in determining whether and in what manner to perform those functions, and
- (b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the provision of the code or

guidance is admissible in evidence, and if the provision 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 provision may be taken into account in determining that question.

*General requirements for licensed institutions*

**Minimum capital requirement for licensed institutions.**

42. (1) A licensed institution incorporated in the Bailiwick shall maintain -

- (a) a paid up share capital (in the case of an institution which is a company limited by shares), or
- (b) capital of such other class or description as the Commission may specify or as the Commission may by regulation prescribe (in any other case),

of not less than the minimum capital requirement or an equivalent sum in any currency acceptable to the Commission (calculated in respect of any particular day at the exchange rate between the relevant currencies prevailing at the close of that day).

(2) In computing, for the purposes of subsection (1), the paid up share capital of a company limited by shares, use of any share premium account is permitted.

(3) In this section "**minimum capital requirement**" means



£1,000,000 or such other sum (whether in sterling or any other currency) as the Commission may by regulation prescribe.

**System of notification to Commission and related matters.**

43. (1) The business of a licensed institution must be carried on in such a way as to ensure that –

- (a) proprietary acquisitions (including subsidiaries, branches and the creation of joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) amounting to over 5% of the institution's capital base are only entered into with the express approval of the Commission which approval shall be sought by way of not less than 30 days' prior notice of the proposed transaction; and when considering whether to grant approval for the transaction the Commission must consider whether –
  - (i) the transaction will expose the institution to undue risk,
  - (ii) the institution has the necessary resources to undertake the transaction, and
  - (iii) any factors hinder effective supervision, in particular if the transaction is to occur in a jurisdiction in which the legal system prohibits or hinders the sharing of information,

- (b) the intention to enter into proprietary acquisitions (including subsidiaries, branches and the creation of joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) over £1,000,000, other than those referred to in subparagraph (a), is reported to the Commission not less than 30 days prior to the proposed transaction, and
- (c) information on the condition of the bank's asset portfolios, including classification of credits, the level of provisioning and major problem assets together with information on other risk types such as material non-credit transactions and operational losses is sent to the Commission on a calendar year quarterly basis (no later than the end of the month following the end of the quarter), and where such information causes the Commission concern the institution shall increase its level of provisions and capital base and the frequency of reports to the Commission, as the Commission so directs.

(2) A person -

- (a) seeking the approval of the Commission under subsection (1)(a),
- (b) making a report to the Commission under subsection

(1)(b), or

- (c) providing information to the Commission under subsection (1)(c),

shall, at such times, intervals and places as may be specified by the Commission, provide to the Commission such information and documents (and thereafter such additional information and documents), of such class or description, in such form and containing such information and particulars, as may be so specified and as the Commission may require for the purpose of the performance of its functions.

### PART III

#### DISCLOSURE OF INFORMATION

##### **Restrictions on disclosure of information.**

44. (1) Subject to the provisions of section 45 –

- (a) no person who under the provisions of or for the purposes of this Law receives information relating to the business, property or affairs of any person,
- (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence.

**Cases where disclosure is permitted.**

45. Section 44 does not preclude –

- (a) the disclosure of -
  - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
  - (ii) 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,
- (b) the disclosure of information for the purpose of enabling or assisting -
  - (i) the Commission, or
  - (ii) any body established by Ordinance under section 48 of this Law or section 84 of the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,
- (c) without prejudice to the generality of paragraph (b),

the disclosure of information by the Commission to the auditor of a licensed institution or former licensed institution if it appears to the Commission that the disclosure would enable or assist the Commission to perform its functions or would otherwise be in the interest of the public or the reputation of the Bailiwick as a finance centre,

- (d) where, in order to enable or assist it to perform its functions, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,
- (e) the disclosure by the Commission of information in the interests of the public or the reputation of the Bailiwick as a finance centre,
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to perform its functions,
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under

the provisions of this Law or any other enactment,

- (h) the disclosure of information –
  - (i) for the purposes of the investigation, prevention or detection of crime, or
  - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under the provisions of this Law or otherwise,

- (i) the disclosure of information in connection with any other proceedings, enforcement action or sanction (civil, criminal or administrative) arising out of or under the provisions of this Law or any other enactment,
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by -
  - (i) an auditor of a licensed institution or former licensed institution, or
  - (ii) a person appointed to make a report under section 5(5)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of

the Protection of Investors Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) of the Insurance Managers and Intermediaries Law, or

- (iii) a person appointed as a skilled person pursuant to the provisions of section 29 of this Law or the corresponding provisions of the regulatory Laws,
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of -
  - (i) information obtained under the provisions of section 28 or 29 of this Law or sections 7 to 13 of the Enforcement Powers Law, or
  - (ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,

- (m) the disclosure of information to a person or entity responsible for a scheme for compensating depositors, investors or customers (whether in the Bailiwick or elsewhere) -
  - (i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to perform its functions, and
  - (ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission,
- (n) the disclosure of information by the Commission for the purposes or in the circumstances described in -
  - (i) section 21(2) of the Financial Services Commission Law,
  - (ii) section 49 of the Protection of Investors Law,
  - (iii) section 39 of the Regulation of Fiduciaries Law,
  - (iv) section 80 of the Insurance Business Law,
  - (v) section 57 of the Insurance Managers and



Intermediaries Law, or

- (vi) section 20 of the Enforcement Powers Law, or
- (o) the disclosure of information for the purpose of enabling or assisting -
  - (i) the Registrar of Companies,
  - (ii) the Alderney Registrar,
  - (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),
  - (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
  - (v) the Principal Ombudsman appointed under section 4 of that Law,
  - (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),

(vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),

(viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or

(ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

**Information supplied to Commission by relevant supervisory authority.**

46. (1) This section applies, to the exclusion of section 44, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) –

(a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,

(b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and

- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

(3) In requesting the consent of a relevant supervisory authority for the purposes of subsection (2)(b), the Commission must provide that authority with -

- (a) the name of any person to whom it proposes to disclose the information, and
- (b) an accurate description of that person's functions.

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the consent of the relevant supervisory authority was given.

(5) For the avoidance of doubt, and without limitation, nothing in this section prevents the disclosure of information by the Commission -

- (a) for the purposes or in the circumstances described in section 45(h), or
- (b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the

disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

(a) receives information described in subsection (1) from the Commission, or

(b) obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information except with, and in accordance with the conditions of, the consent of the Commission.

(7) A person who discloses information in contravention of subsection (6) is guilty of an offence.

**Royal Court to take Commission's undertakings into account.**

47. The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business, property or affairs of any person held, received or obtained by it under the provisions of or for the purposes of this Law or the regulatory Laws (whether pursuant to those provisions or otherwise) -

(a) take into account -

(i) any obligation as to confidentiality or other restriction on the disclosure of information

imposed by statute, contract or otherwise to which the Commission is subject in respect of the information,

- (ii) any undertaking entered into by the Commission in relation to the use, disclosure, safekeeping and return of the information, and
  - (iii) any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the information is held or was received or obtained, and
- (b) where the information has been supplied to the Commission by a relevant supervisory authority -
- (i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and
  - (ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it.

#### PART IV

#### COMPENSATION SCHEMES

##### **Power to establish compensation schemes.**

48. (1) The States may by Ordinance establish any scheme considered

by them to be desirable or expedient for the protection and compensation of depositors, investors or customers in cases where licensed institutions or former licensed institutions are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their deposit-taking business.

(2) Without prejudice to the generality of the foregoing, an Ordinance under subsection (1) may make provision in respect of all or any of the following matters –

- (a) the establishment of a fund for the protection and compensation of depositors, investors and customers,
- (b) the holding, management and application of the said fund,
- (c) the making of contributions to the fund and the levying thereof from licensed institutions and former licensed institutions,
- (d) the costs, expenses and other items which are to be chargeable to the fund,
- (e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made,
- (f) the description and amount of the deposits or other liabilities, and the description of creditors, to be

protected,

- (g) the liability of licensed institutions and former licensed institutions in respect of compensation payments,
- (h) the payment or repayment of claims, contributions or other monies, or any description thereof,
- (i) the tax treatment of contributions and repayments thereof,
- (j) the crediting of monies and income to the fund,
- (k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,
- (l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body,
- (m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights.

## PART V

### OFFENCES AND PENALTIES

**Penalties.**

49. (1) A person guilty of an offence under section 16(5), 17(8), 24(3), 26(5), 32(4), 33(5) or 34(7) or (8) is liable –

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under any other provision of this Law is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsections (1)(a) and (2)(a) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by section 13 of the Government of Alderney Law, 2004<sup>f</sup> and section 11 of the Reform (Sark) Law, 2008<sup>g</sup>.

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<sup>f</sup> Order in Council No. III of 2005; amended by No. XXII of 2010; and No. XI of 2012.



(4) Where an offence under this Law involves a public display or exhibition of any name or description, there shall be deemed to be a fresh offence on each day on which the display or exhibition continues.

**Criminal liability of directors, etc.**

50. (1) Where an offence under the provisions of this Law is committed by a company or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a company, any director, controller, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any member,
- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

he as well as the company or other legal person (as the case may be) is guilty of the

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<sup>8</sup> Order in Council No. V of 2008; amended by No. VI of 2008; No. XXVII of 2008; No. XIV of 2010; and No. XII of 2011.

offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company or other legal person are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

**Criminal proceedings against unincorporated bodies.**

51. (1) Where an offence under the provisions of this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under the provisions of this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subsection (1), be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law shall be paid from the funds of that body.

**Defence of due diligence.**

52. In any proceedings for an offence under the provisions of this Law it is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

**Jurisdiction.**

53. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under the provisions this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

PART VI  
GENERAL PROVISIONS

*Miscellaneous*

**Commission to have regard to guidance, etc, under FSC Law and other matters.**

54. (1) In performing its functions under the provisions of this Law -

(a) the Commission must (so far as relevant) -

(i) take into account any written guidance of a general character given by the Committee under section 7(1)(a) of the Financial Services Commission Law, and

(ii) act in accordance with any written directions of a general character given by the Committee under section 7(1)(b) of that Law,

concerning the policies to be followed by the Commission in relation to the supervision of finance business in the Bailiwick and the manner in which any function of the Commission is to be performed,

(b) the Commission may take into account (so far as relevant) -

(i) any guidance notes or international standards relating to deposit-taking business and regulation issued by a body recognised by the Commission and identified in a code issued under the provisions of this Law,

- (ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law or the Financial Services Commission Law,
  - (iii) any matter to which it may have regard under the provisions of this Law when performing the function in question, and
  - (iv) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action, duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction, order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any licensed institution, holder of a supervised role or other person or entity, and
- (c) the Commission must have regard to the objectives of -
- (i) protecting the public and the reputation of the Bailiwick as a finance centre,
  - (ii) ensuring that any relevant markets are fair, efficient and transparent, and
  - (iii) reducing risks to the financial system in the Bailiwick.

(2) The provisions of this section are in addition to and not in derogation from any other provision of this Law or any other enactment or rule of law relating to the functions of the Commission or the performance thereof and the matters which it must or may take into account.

**Verification of information and execution of documents.**

55. (1) The Commission may require that any information, statement or other document provided to it in compliance or purported compliance with any obligation imposed by or under the provisions of this Law shall be verified in such manner as the Commission may reasonably specify.

(2) Without prejudice to any other enactment or rule of law relating to the form, execution and submission of documents, all returns and other documents required by or under the provisions of this Law to be submitted to the Commission by a licensed institution shall be signed by the chief executive and chief financial officer of the institution, or their alternates, unless the Commission directs otherwise (whether generally or in any particular case or class or description of case).

(3) Any information, statement or other document which is not verified in accordance with a requirement made under subsection (1) shall be deemed for the purposes of this Law not to have been provided in accordance with the obligation referred to in that subsection and the said obligation shall accordingly be deemed not to have been complied with.

(4) Any return or other document which is not signed in accordance with subsection (2) or a direction of the Commission thereunder shall be deemed for the purposes of this Law not to have been submitted as required by or

under the provisions of this Law, and that requirement shall accordingly be deemed not to have been complied with.

**Service of notices and documents.**

56. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served upon –

- (a) an individual, by being delivered to him, or by being left at, or sent by post to, his usual or last known place of abode, or by being transmitted to his relevant electronic address,
- (b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,
- (c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –
  - (i) its principal or last known principal place of business in the Bailiwick, or
  - (ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

- (d) an unincorporated body -
  - (i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or
  - (ii) by being left at, or sent by post to -
    - (A) the body's principal or last known principal place of business in the Bailiwick, or
    - (B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

- (e) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post to, its principal office in the Bailiwick, or by being transmitted to its electronic address,



- (f) subject to the provisions of section 57, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

and in this section -

- (i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

- (ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

- (iii) **"relevant electronic address"** means an electronic address -

- (A) with which, in the opinion of the Commission, the person concerned has a personal, business or other connection, and

- (B) a document transmitted to which is likely to come to his attention,

- (iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which

produce or enable the production of a document containing the text of the communication, and

- (v) **"summons"** includes any document compelling a person's attendance before the court.

(2) If under the provisions of or for the purposes of this Law a person notifies the Commission of –

- (a) an address for service within the Bailiwick, or
- (b) an electronic address at which the service of documents may be effected on him,

any document other than a summons to be given to or served upon him under those provisions or for those purposes may be given or served by being left at, or sent by post to, that address in the Bailiwick or (as the case may be) by being transmitted to that electronic address.

(3) If service of a document under the provisions of or for the purposes of this Law cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of this section and of any

other rule of law in relation to the service of documents, no document to be given to or served on the Committee or any other committee of the States of Guernsey or the Commission or its Chairman under the provisions of or for the purposes of this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under the provisions of or for the purposes of this Law is a minor or person under guardianship, the document shall be served on his guardian; and if there is no guardian, the Commission (or, with leave of the court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the “**appropriate Court**” means –

- (a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) A document shall be deemed for the purposes of this Law to have been -

- (a) addressed to the person concerned, and
- (b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

**Documents to be submitted in electronic form and by electronic means.**

57. (1) Where a document is required or permitted to be submitted to the Commission by or under the provisions of or for the purposes of this Law, and except to the extent that express provision to the contrary is made by or under the provisions of this Law, the document -

- (a) shall be in such electronic form, and shall be submitted

by such electronic means and to such electronic address, as the Commission may require, whether in any particular case or class of cases or generally, or

- (b) shall be in such non-electronic form, and shall be submitted by such non-electronic means, as the Commission may in its absolute discretion require in any particular case or class of case.

(2) Where a document is required by or under the provisions of or for the purposes of this Law to be in such form as the Commission may require, the Commission may, in its absolute discretion and without limitation, require the document to be in such electronic form or non-electronic form as the Commission may require, whether in any particular case or class of cases or generally.

(3) This section applies, without limitation, to any, and to anything accompanying any, application, notice, return, validation, accounts, report, statement, consent, declaration, questionnaire, computation, plan or signature.

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000<sup>h</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>i</sup> and the Electronic Transactions (Sark) Law, 2001<sup>j</sup>.

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

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

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

**Evidence.**

58. (1) In any proceedings, a certificate signed on behalf of the Commission certifying –

- (a) that a particular person is or is not a licensed institution or former licensed institution or was or was not a licensed institution or former licensed institution at a particular time,
- (b) that a particular person was or was not registered under the provisions of section 4 of the Ordinance of 1971 or was or was not so registered at a particular time,
- (c) the date on which a particular person obtained or ceased to hold a banking licence or was registered or ceased to be registered as mentioned in paragraph (b),
- (d) the terms of any conditions imposed in respect of a particular person's banking licence or subject to which a person was registered as mentioned in paragraph (b),

is admissible in evidence.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

*Liability of States, Commission, etc*

**Exclusion of liability.**

59. (1) No liability shall be incurred –

- (a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (b) by the Commission,
- (c) by Her Majesty's Greffier, Her Majesty's Sheriff, the Registrar of Companies, the Alderney Greffier or the Prévôt of Sark,
- (d) by any member, officer or servant of any of the aforesaid, or
- (e) by any other person or entity specified by Ordinance of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of

section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>k</sup>.

- (3) The States may by Ordinance amend this section.

*Ordinances, regulations and rules, etc*

**Ordinances, regulations, rules, codes and guidance, etc - general.**

60. (1) The States may by Ordinance make such provision as they think fit –

- (a) for the purpose of carrying the provisions of this Law into effect, and
- (b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

(2) Any Ordinance, regulation, rule, code, guidance, principles, policies or instructions under the provisions of this Law –

- (a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions, as the case may be, hereunder,
- (b) may contain such consequential, incidental,

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<sup>k</sup> Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; and G.S.I. No. 27 of 2006.



supplementary, savings, transitional and other ancillary provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance or regulation -

- (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (3)),
- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2)(b)(i) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being

imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(4) The States may by Ordinance empower -

- (a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and
- (b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (2)(b)) provision amending this Law.

(5) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, code, guidance, principles policies or instructions 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,
- (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,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 70), consult

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- (a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney, and

- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 70) ceases to have effect –

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or

(b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section -

(a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and

(b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).

(11) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

61. Regulations made under the provisions of this Law -

(a) where made by the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,

- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

**Publication of regulations, rules, codes and guidance, etc.**

62. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions under the provisions of this Law, and
- (b) any policies issued by the Commission in respect of the

granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any banking licences, consents, registrations, permissions and authorisations or otherwise in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the Commission may charge such fee -

- (a) as may be prescribed by regulations under section 7, or
- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

**Making and effect of contravention of rules.**

63. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

- (a) 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

(b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render him liable to any criminal proceedings, but –

(a) the Commission, in the performance of its functions, may take the rule and the contravention thereof into account in determining whether and in what manner to perform those functions, and

(b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of 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.

**Regulations and rules are statutory instruments.**

64. For the avoidance of doubt, regulations and rules under the



provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>1</sup>, the provisions of which shall apply accordingly.

**Power to adapt rules, codes and guidance, etc, under this Law.**

65. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensed institution or an applicant for a banking licence, by notice in writing served on it adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to its circumstances or to the circumstances of any particular business carried on by it.

(2) The Commission shall not exercise the powers conferred by subsection (1) in any case unless it appears to the Commission that –

- (a) compliance with the requirements in question would be unduly burdensome for the licensed institution or applicant having regard to the benefit which compliance would confer on depositors, investors or customers, and
- (b) the exercise of those powers will not result in any undue risk to depositors, investors or customers.

(3) The powers conferred by subsection (1) may be exercised unconditionally or subject to conditions.

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<sup>1</sup> Recueil d'Ordonnances Tome X, p. 16.

(4) In this section "**adaptations**" includes exceptions and modifications (and related expressions shall be construed accordingly).

*Interpretation, repeals, commencement, etc*

**Interpretation.**

66. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) –

"**accountant**" means a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>m</sup>,

"**actuary**" means -

- (a) a fellow of the Institute and Faculty of Actuaries in the United Kingdom (or a member or other person subject to the rules of such other body as the Committee may approve by regulation),
- (b) any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for -
  - (i) a person holding a licence under the provisions of the regulatory Laws, or

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

- (ii) an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, or
- (c) any other person who performs or has performed the functions of an actuary of a person or entity which holds or is deemed to hold, or in respect of which there is held or deemed to be held, a licence, consent, registration, permission or authorisation from the Commission under the provisions of the regulatory Laws (including, for the avoidance of doubt, and without limitation, an authorised or registered collective investment scheme),

**"additional controller holding"** : see section 17(1)(b),

**"administration manager"** means a person appointed by the Royal Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"advertisement"** includes every form of advertising and any means of bringing an invitation or information to the notice of any person including, without limitation, by publication, broadcast, electronic means, circulars, notices, window displays, posters, brochures and leaflets, and references to the "issue" of an advertisement shall be construed accordingly,

**"advocate"** means an Advocate of the Royal Court of Guernsey,

**"Alderney company"** means a company the memorandum and

articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>n</sup>,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004<sup>o</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (Alderney) Law, 1994,

**"ancillary vehicle"** : see section 20(3) of the Protection of Investors Law,

**"appointed Laws"** means -

- (a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

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<sup>n</sup> Order in Council No. XXXIV of 1994; there are amendments not material to this enactment.

<sup>o</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

**"appointed person"** : see section 28(1),

**"appropriate Court"** : see sections 11(14), 24(14) and 56(6),

**"approved supervised role"** : see section 12(1),

**"associate"**, in relation to any person, means –

- (a) the spouse, civil partner or child of that person,
- (b) a person with whom that person is living as if they were married or civil partners (a **"cohabitant"**),
- (c) any body of which that person is a director,
- (d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,
- (e) if that person is a company –

- (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (f) where that person is an unincorporated body, any director of that body,
- (g) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power (whether in general meeting or otherwise) in relation to a company, that other person:

Provided always that the Commission may by regulation amend the definition of "associate",

**"associated company"** means a company of a description set out in paragraph (d) of the definition of "associated party",

**"associated party"**, in relation to any person, means -

- (a) any person who is a partner (or fellow member, in the case of a limited liability partnership) of that person,

- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) any body in respect of which that person holds a supervised role,
- (e) where that person is a company -
  - (i) a holding company, subsidiary or related company of that person,
  - (ii) a subsidiary or related company of a holding company of that person,
  - (iii) a holding company of a subsidiary of that person, or
  - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

Provided always that the Commission may by regulation amend the

definition of "associated party",

**"auditor"** means –

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>P</sup> and who is, where required by or under the provisions of this Law, approved by the Commission to audit the accounts of licensed institutions,
- (b) any other person who performs or has performed the functions of an auditor of a licensed institution,

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

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

**"Bailiwick body"** means -

- (a) a Guernsey body, being -
  - (i) a Guernsey company,

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<sup>P</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.



- (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or
  - (iii) an unincorporated body whose principal place of business is in Guernsey,
- (b) an Alderney body, being -
  - (i) an Alderney company, or
  - (ii) an unincorporated body whose principal place of business is in Alderney,
- (c) a Sark body, being any body, other than one mentioned in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

**"banking licence"** : see section 1,

**"Banking Supervision Law, 1994"** means the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>9</sup>,

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<sup>9</sup> No. XIII of 1994 (Ordres en Conseil Vol. XXXV(1), p. 271); there are amendments not material to this enactment.

"**body**" includes a company, any other legal person and an unincorporated body,

"**business day**" means any day other than -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday,
- (b) a day appointed as a public holiday -
  - (i) in relation to the Bailiwick excluding the islands of Alderney and Sark, by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>r</sup>,
  - (ii) in relation to the island of Alderney, by Ordinance of the States of Alderney under the said section 1(1) or under paragraph (o) of Schedule 2 to the Government of Alderney Law, 2004<sup>s</sup>,
  - (iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

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<sup>r</sup> Ordres en Conseil Vol. XVII, p. 384; there are amendments not material to this enactment.

<sup>s</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

**"capital base"**, in relation to a licensed institution and any relevant subsidiary thereof, means the capital base -

- (a) determined by the Commission under the provisions of section 26(9) after consultation with the licensed institution concerned and in accordance with principles published by the Commission; and any such determination may be varied from time to time, or
- (b) where the Commission has made no such determination, determined in accordance with rules or guidance of the Commission under the provisions of section 26(9) in respect of large exposures and the risk thereof, capital base and related matters,

**"chief executive"**, in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

**"chief risk officer"** means an officer, appointed by a licensed institution or by another person or entity, with responsibility, under the terms of his appointment, for the risk management functions of the licensed institution, person or entity (as the case may be),

"**child**" includes a stepchild, an adopted child and an illegitimate child,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" shall be construed accordingly,

"**close relative**" of a person means –

- (a) his spouse, civil partner or cohabitant,
- (b) his children, parents, step-parents, brothers, sisters, half-brothers, half-sisters, step-brothers and step-sisters, and
- (c) the spouse, civil partner or cohabitant of any person within paragraph (b),

"**cohabitant**" : see paragraph (b) of the definition of "associate",

"**Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

the "**Committee**" means the States of Guernsey Policy and Resources

Committee or such other committee as the States may specify by Ordinance,

**"committee"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

**"company"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"compliance officer"** means an officer, appointed by a licensed institution or by another person or entity, with responsibility, under the terms of his appointment, for independently monitoring, and reporting to the directors, partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) or chief executive on and providing guidance and making recommendations in respect of -

- (a) compliance by that licensed institution, person or entity with -
  - (i) the provisions of this Law, the Financial Services Commission Law and the regulatory Laws,
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and

- (iii) its policies and procedures relating to corporate governance, ethics and standards of conduct, and
- (b) fulfilment by that licensed institution, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensed institution, person or entity, of the applicable minimum criteria for licensing,

**"contract of employment"** means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

**"contravention"** includes failure to comply,

**"controller"**, in relation to a body, means –

- (a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>t</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"deposit"** : see section 2,

**"deposit advertisement"** : see section 24(5),

**"deposit-taking business"** : see section 3,

**"determined"**, in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

**"directed person"** : see section 11(1),

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

(a) in relation to information stored or recorded otherwise

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<sup>t</sup> Ordres en Conseil Vol. XVIII, p. 315; there are amendments not material to this enactment.

than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in a form -

- (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form,
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language:

Provided always that the Committee may by regulation amend the definition of "documents",

**"electronic address"** : see section 56(1)(ii),

**"electronic form"**, in relation to the electronic storage or recording of information or documents, includes storage or recording by means of any form of information storage technology,

**"electronic means"**, in relation to the sending of a document, includes any technology by which the document is -

- (a) sent and received at its destination by means of



electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and

- (b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of "electronic address", "electronic form" and "electronic means",

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

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

**"Enforcement Powers Law"** means the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>u</sup>,

**"entity"** includes a scheme, trust, structure, arrangement and cell of a protected cell company,

**"equity share capital"** means, in relation to a company limited by shares, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a

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<sup>u</sup> Approved by the States of Deliberation on the \*\* July, 2020.

specified amount in a distribution,

**"exercise"**, or **"control the exercise of"** voting power : for the purposes of this Law a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever -

- (a) becomes entitled to do so as a member of a body, or
- (b) acquires any interest which may entitle him to be a member of, or otherwise to exercise or control the exercise of voting power of, that body,

**"Financial Services Commission Law"** means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>v</sup>,

**"former licensed institution"** means an institution which –

- (a) does not hold and is not deemed to hold a banking licence under this Law, but
- (b) has previously held or been deemed to hold such a licence or a banking licence under the Banking Supervision Law, 1994 or was registered under the provisions of section 4 of the Ordinance of 1971,

and also includes any person described in section 68(2) or (3),

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<sup>v</sup> Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to this enactment.

**"foundation"** means -

- (a) a Guernsey foundation, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and however named),

**"foundation official"** means -

- (a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012<sup>w</sup>, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

**"functions"** includes duties, powers and privileges,

**"functions"** of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law,

**"general partner"** means -

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<sup>w</sup> Order in Council No. I of 2013.

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>x</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

"**group**", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

"**group entity**" means a body or entity carrying on deposit-taking business and which is not a licensed institution but which is part of a group containing a licensed institution,

"**Guernsey company**" means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>y</sup>,

"**Guernsey foundation**" means a foundation established under the

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<sup>x</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.

<sup>y</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

Foundations (Guernsey) Law, 2012,

**"Guernsey limited liability partnership"** means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>z</sup>,

**"Guernsey limited partnership"** means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality),

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"holding company"** : see Schedule 3,

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

**"indirect controller"**, in relation to a body, means a person in accordance with whose directions or instructions -

- (a) any director of that body,
- (b) where that body is a company, any director of any other company of which that body is a subsidiary, or

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<sup>z</sup> Order in Council No. VI of 2014.

<sup>aa</sup> Ordres en Conseil Vol. XXV, p. 124; there are amendments not material to this enactment.

(c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or, where that body is a company, in any other company of which that body is a subsidiary) directly or indirectly which makes it possible to exercise significant influence over the management of the body,

**"information"** includes, for the avoidance of doubt, a signature,

**"inspected person"** : see section 29(4),

**"institution"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

**"international agreement"** means -

(a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and

(b) any Community provision within the meaning of section 3(1) of the European Communities

(Implementation) (Bailiwick of Guernsey) Law, 1994<sup>bb</sup>,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

**"investment company"** : see section 79(1) of the Protection of Investors Law,

**"jurisdiction"** includes any country, territory or other place,

**"legal professional privilege"**, and communications or items subject thereto : see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>cc</sup>,

**"licensed institution"** means an institution which holds or which is deemed to hold a banking licence,

**"limited liability partnership"** means -

- (a) a Guernsey limited liability partnership, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a

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<sup>bb</sup> Order in Council No. III of 1994.

<sup>cc</sup> Ordres en Conseil Vol. XLIII, p. 617; there are amendments not material to this enactment.

Guernsey limited liability partnership,

**"limited partner"** means -

- (a) in relation to a Guernsey limited partnership, a limited partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>dd</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of **"limited partnership"**, a person described in paragraph (b)(ii) of that definition,

**"limited partnership"** means –

- (a) a Guernsey limited partnership, or
- (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –
  - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

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<sup>dd</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.



- (ii) the others (referred to in this Law as "**limited partners**") have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"**liquidator**" includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

"**member**", in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008<sup>ee</sup>,
- (b) an Alderney company, has the same meaning as in the Companies (Alderney) Law, 1994, and
- (c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited

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<sup>ee</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

Liability Partnerships (Guernsey) Law, 2013,

**"minimum criteria for licensing"** means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 2,

**"money laundering compliance officer"** means the money laundering compliance officer appointed in accordance with paragraph 15 of Schedule 3 to the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999,

**"money laundering reporting officer"** means the money laundering reporting officer appointed in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999,

**"nominated officer"** means the nominated officer nominated in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

**"notified supervised role"** : see section 12(3),

**"officer"**, in relation to a company, includes a director, liquidator, manager and secretary thereof,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney -
  - (i) a member of any police force which may be established by the States of Alderney, and
  - (ii) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004<sup>ff</sup>,
- (c) in relation to Sark -
  - (i) the Constable, an Assistant Constable and the Vingtenier, and
  - (ii) within the limits of his jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

"**Ordinance of 1971**" means the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971<sup>gg</sup>,

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<sup>ff</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

<sup>gg</sup> Recueil d'Ordonnances Tome XVII, p. 225.

**"ordinary members of the Commission"** means the members of the Commission other than the Chairman,

**"other supervised manager"** : see section 12(3)(d),

**"partner"** has the same meaning as in the Partnership (Guernsey) Law, 1995<sup>hh</sup>, and includes a general partner and a limited partner of a limited partnership,

**"partnership"** : see section 1 of the Partnership (Guernsey) Law, 1995,

**"person"** includes -

- (a) an individual,
- (b) a company,
- (c) any other legal person, and
- (d) an unincorporated body,

**"Policy and Finance Committee of the Chief Pleas of Sark"** : see subsection (2),

**"Policy and Finance Committee of the States of Alderney"** : see subsection (2),

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<sup>hh</sup> Ordres en Conseil Vol. XXXVI, p. 179; there are amendments not material to this enactment.

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Companies (Guernsey) Law, 2008,

**"Protection of Investors Law"** means the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>ii</sup>,

the **"provisions of"** this Law or any other enactment include the provisions of -

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the **"purposes of"** this Law or any other enactment),

**"public"** means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, depositors, investors and customers and potential depositors, investors and customers (whether of any

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<sup>ii</sup> Approved by the States of Deliberation on the \*\* July, 2020.

person or entity, or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, depositors, investors or customers of, in or with that body,

the "**purposes of**" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

"**qualifying capital interest**" : see the definition of "related company" below,

"**recovery plan**" means a plan, in such form and containing such information as may be determined by the Commission and as may be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency),

"**reduced controller holding**" : see section 17(2)(b),

"**Registrar of Companies**" means the holder for the time being of the office established under section 495(1) of the Companies (Guernsey) Law, 2008<sup>jj</sup>,

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<sup>jj</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>kk</sup>,

**"regulatory Laws"** means –

- (a) the Protection of Investors Law,
- (b) the Regulation of Fiduciaries Law,
- (c) the Insurance Business Law,
- (d) the Insurance Managers and Intermediaries Law,
- (e) the Financial Services Commission Law,
- (f) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,
- (g) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (h) the Enforcement Powers Law,
- (i) any other enactment prescribed for the purposes of this Law by regulation of the Committee,

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<sup>kk</sup> Approved by the States of Deliberation on the \*\* July, 2020.

**"related company"**, in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest; and for the purposes of this Law -

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,

(b) where -

(i) a company holds a qualifying capital interest in another company, and

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above under "related company", unless the



contrary is shown, and

- (c) in paragraph (b)(ii) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a):

Provided always that the Committee may by regulation amend the definitions of "related company", "qualifying capital interest" and "relevant shares",

**"relevant electronic address"** : see section 56(1)(iii),

**"relevant document"** : see section 38(p),

**"relevant person"** : see section 27(1),

**"relevant supervisory authority"** means -

- (a) an authority performing in the Bailiwick or any other jurisdiction -

- (i) functions corresponding to any functions of the Commission, or

- (ii) such other functions as the Committee may by regulation prescribe,

including functions in respect of the Bailiwick,

- (b) any international organisation, that is to say, any organisation, community or body -
  - (i) of which the United Kingdom or any other sovereign power is a member, or
  - (ii) which is established under any international agreement,
- (c) a self-regulatory organisation, or
- (d) a resolution authority, that is to say, a public authority that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other

jurisdiction -

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or
- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

**"servant"** includes a person working under a contract for services and an employee,

**"shareholder controller" -**

- (a) in relation to a body, and subject to the provisions of paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of

that company,

**"significant shareholder"**, in relation to a body, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"skilled person"** : see section 29(1),

**"special purpose vehicle"** means a body or entity created solely for the purposes of -

- (a) a particular financial transaction or series of financial transactions, or
- (b) the holding and/or lending of assets,

**"States"** means the States of Deliberation,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"subsidiary company"** : see Schedule 3 (and **"subsidiary"** has the same meaning),

**"supervised body"** is –

- (a) a body –
  - (i) which is a licensee within the meaning of the Protection of Investors Law or which is exempt from licensing under section 44 of that Law, or
  - (ii) which holds an authorisation or registration under section 8 of that Law,
- (b) a body which is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law,
- (c) a body which is a licensee within the meaning of the Insurance Business Law,
- (d) a body which is a licensee within the meaning of the Insurance Managers and Intermediaries Law,
- (e) a body which is of any other class or description prescribed for the purposes of this Law by regulations of the Committee,

**"supervised role"** means an approved supervised role, a notified supervised role or a vetted supervised role,

**"transmitted"** : see section 56(1)(iv),

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>II</sup>,

**"vetted supervised role"** : see section 12(2).

(2) Unless the contrary intention appears, references in the provisions of this Law to –

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) In this Law –

- (a) words importing the neuter gender include the masculine and the feminine, and

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

(b) words importing the masculine gender include the feminine and the neuter.

(5) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016<sup>mm</sup> applies to the interpretation of this Law throughout the Bailiwick.

(6) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

(7) Subsection (6) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

**Repeals.**

67. The following enactments or provisions of enactments are repealed –

(a) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>nn</sup>,

(b) section 2(1) of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002<sup>oo</sup>,

(c) in the Insurance Business (Bailiwick of Guernsey) Law,

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<sup>mm</sup> Order in Council No. V of 2018.

<sup>nn</sup> Order in Council No. XIII of 1994 (Ordres en Conseil Vol. XXXV(1), p. 271).

<sup>oo</sup> Order in Council No. XVII of 2002.

2002, item 3 in the table in Part I of Schedule 6<sup>pp</sup>,

- (d) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003<sup>qq</sup>,
- (e) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008<sup>rr</sup>,
- (f) the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008<sup>ss</sup>,
- (g) in the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009<sup>tt</sup>, the entries relating to the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (h) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010<sup>uu</sup>,

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<b>pp</b>	Order in Council No. XXI of 2002.
<b>qq</b>	Order in Council No. XVI of 2003.
<b>rr</b>	Order in Council No. XVI of 2008.
<b>ss</b>	Order in Council No. IV of 2009.
<b>tt</b>	Order in Council No. XIII of 2010.
<b>uu</b>	Order in Council No. XXI of 2010.



- (i) section 4(c) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015<sup>vv</sup>,
- (j) section 1(2)(c) of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015<sup>ww</sup>,
- (k) section 63(3) of the Single Euro Payments Area (Guernsey) Ordinance, 2016<sup>xx</sup>,
- (l) paragraph 3 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017<sup>yy</sup>,
- (m) paragraph 3 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017<sup>zz</sup>,
- (n) paragraph 3 of the Second Schedule to the Transfer of Funds (Sark) Ordinance, 2017<sup>aaa</sup>,

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<sup>vv</sup> Ordinance No. XII of 2015.

<sup>ww</sup> Ordinance No. XXXIX of 2015.

<sup>xx</sup> Ordinance No. II of 2016.

<sup>yy</sup> Alderney Ordinance No. III of 2017.

<sup>zz</sup> Ordinance No. XXVII of 2017.

<sup>aaa</sup> Sark Ordinance No. X of 2017.

- (o) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2000<sup>bbb</sup>,
- (p) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008<sup>ccc</sup>,
- (q) the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010<sup>ddd</sup>,
- (r) regulation 2 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010<sup>eee</sup>,
- (s) regulation 1(2) of the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017<sup>fff</sup>,
- (t) paragraph 2(2) of Schedule 4 to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>ggg</sup>.

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**bbb** G.S.I. No. 3 of 2000.

**ccc** G.S.I. No. 1 of 2008.

**ddd** G.S.I. No. 35 of 2010.

**eee** G.S.I. No. 83 of 2010.

**fff** G.S.I. No. 50 of 2017.

**ggg** Order in Council No. VI of 2017.

**Savings and transitional provisions.**

68. (1) An institution which, immediately before the commencement of this Law, was a licensed institution within the meaning of the Banking Supervision Law, 1994 shall, on the commencement of this Law, be deemed -

(a) to be a licensed institution, and

(b) to have been granted a banking licence,

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly.

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Banking Supervision Law, 1994 in respect of that institution's banking licence or in respect of licensed institutions generally shall apply in respect of the banking licence under this Law which that institution is deemed to hold by virtue of this subsection.

(2) A person who before the commencement of this Law was at any time but had ceased to be a licensed institution within the meaning of the Banking Supervision Law, 1994 shall (unless he is for the time being a licensed institution within the meaning of this Law) be deemed to be a former licensed institution within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(3) A person who at any time before the commencement of this Law carried on deposit-taking business -

(a) and who was exempted by the provisions of the

Banking Supervision Law, 1994 from the requirement to be licensed thereunder, or

- (b) otherwise in such circumstances specified in the provisions of that Law as not to require licensing thereunder,

in respect of such business, but -

- (i) who is no longer carrying on deposit-taking business, or
- (ii) who is not exempted by the provisions of this Law from the requirement to be licensed hereunder or who may not carry on deposit-taking business in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

shall (unless he is for the time being a licensed institution within the meaning of this Law) be deemed to be a former licensed institution within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(4) Any reference in any enactment, however expressed, to an enactment or any provision of an enactment repealed by this Law and re-enacted (with or without modification) by, or by any provision of, this Law or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the enactment, or the provision of the enactment, as re-enacted.

(5) Any reference in any enactment, however expressed, to a licensed institution or a banking licence within the meaning of the Banking Supervision Law, 1994 shall be construed, after the commencement of this Law, as a reference to a licensed institution or (as the case may be) a banking licence within the meaning of this Law.

(6) Any Ordinance or subordinate legislation made or other thing done under an enactment or any provision of an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under, or under any provision of, this Law or the Enforcement Powers Law shall have effect, after the commencement of this Law, as if made or done under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(7) Subsection (6) applies to any subordinate legislation made under a provision of an enactment repealed by this Law notwithstanding that the corresponding provision of this Law or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(8) Anything in the process of being done on the commencement of this Law under an enactment or a provision of an enactment repealed by this Law which could be done under, or under any provision of, this Law or the Enforcement Powers Law may be continued to be done after the commencement of this Law under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(9) The Committee may make regulations containing such savings

and transitional provision as it thinks fit -

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of any enactment repealed by this Law which are re-enacted (with or without modification) by the provisions of this Law to the corresponding provisions of this Law.

(10) Regulations under subsection (9) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(11) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any other provision of this Law.

**Citation.**

69. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

70. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

SCHEDULE 1  
EXEMPTED PERSONS

1. The States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

2. The central bank of a member state of the Organisation for Economic Co-operation and Development.

3. The National Savings Bank of the United Kingdom within the meaning of the Post Office Act 1969<sup>hhh</sup>.

4. (1) A friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974<sup>iii</sup> or section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970<sup>jjj</sup>.

(2) This paragraph applies only to the acceptance of deposits in the course of carrying out transactions permitted by the rules of the society concerned.

5. (1) An insurer licensed under section 7 of the Insurance Business Law to carry on insurance business of a class specified in that Law.

(2) An insurer carrying on insurance business (in each case within

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<sup>hhh</sup> An Act of Parliament (1969 c. 48).

<sup>iii</sup> An Act of Parliament (1974 c. 46).

<sup>jjj</sup> An Act of Parliament (1970 c. 31).

the meaning of the Insurance Business Law) in such circumstances as not to require licensing by virtue of section 5 of that Law.

(3) This paragraph applies only to the acceptance of deposits in the course of lawfully carrying on –

- (a) in the case of a person described in subparagraph (1), insurance business of the class authorised by the licence,
- (b) in the case of a person described in subparagraph (2), insurance business of the class to which the exemption applies,

in accordance with the provisions of the Insurance Business Law.



SCHEDULE 2  
MINIMUM CRITERIA FOR LICENSING

**Integrity and skill.**

1. (1) The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on –

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of its activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting its business, the applicant or licensed institution shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensed institution.

**Fit and proper persons.**

3. (1) The applicant or licensed institution is a fit and proper person

to hold a banking licence and every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed institution is a fit and proper person to hold that position.

(2) In determining whether a person is a fit and proper person to hold a banking licence or a particular position, regard shall be had to –

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed institution or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of the public or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a banking licence or that position,
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of

depositors, investors and customers and his record of compliance with the provisions of –

- (i) the appointed Laws,
  - (ii) the Transfer of Funds (Guernsey) Ordinance, 2017, the Transfer of Funds (Alderney) Ordinance, 2017 and the Transfer of Funds (Sark) Ordinance, 2017,
  - (iii) the Single Euro Payments Area (Guernsey) Ordinance, 2016,
  - (iv) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
  - (v) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
  - (vi) any legislation implementing European Union or United Nations sanctions and applicable in the Bailiwick, and
  - (vii) any other enactment prescribed for the purposes of this Law by regulation of the Commission,
- (g) his record of compliance with the provisions of the Companies (Guernsey) Law, 2008 in acting as a

corporate services provider or a resident agent within the meaning of that Law,

- (h) his record of compliance with the provisions of the Foundations (Guernsey) Law, 2012 in acting as a foundation official or a resident agent within the meaning of that Law,
- (i) his record of compliance with the provisions of the Limited Liability Partnerships (Guernsey) Law, 2013 in acting as a corporate services provider or a resident agent within the meaning of that Law, and
- (j) his policies, procedures and controls to comply with any rules, codes, guidance, principles, policies and instructions referenced under paragraph 1(2).

(3) Without prejudice to the generality of subparagraphs (1) and (2), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has –

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any of the provisions of –
  - (i) this Law,

- (ii) the Ordinance of 1971,
- (iii) the regulatory Laws,
- (iv) the repealed regulatory legislation (within the meaning of the Enforcement Powers Law),
- (v) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, any rules, codes, guidance, principles, policies and instructions issued by the Commission in relation thereto), or
- (vi) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –
  - (A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries Law), banking, insurance, investment or other financial services, or
  - (B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons in respect of whom there has

been a winding up event within the meaning of the Enforcement Powers Law),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on deposit-taking business, or

(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

(4) For the purposes of this paragraph and for the avoidance of doubt -

(a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,

(b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

- (c) **"enactment"** includes any primary, secondary or tertiary legislation of any jurisdiction in the British Islands or elsewhere.

**Business to be directed by at least two individuals.**

4. (1) At least two individuals who are –

- (a) resident in the Bailiwick,
- (b) of appropriate standing and experience, and
- (c) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensed institution.

(2) For the purposes of subparagraph (1)(c), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

**Composition of board of directors.**

5. Where the applicant or licensed institution is incorporated in the Bailiwick, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the applicant or licensed institution and the nature and scale of its operations.

**Business to be conducted in prudent manner.**

6. (1) The applicant or licensed institution conducts or, in the case of an institution which is not yet carrying on deposit-taking business, will conduct its business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to the provisions of subparagraph (4), an applicant or licensed institution shall not be regarded as conducting its business in a prudent manner unless –

(a) it maintains or, as the case may be, will maintain –

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) it maintains or, as the case may be, will maintain adequate liquidity, having regard to –

(i) the relationship between its liquid assets and its actual and contingent liabilities,

(ii) the times at which those liabilities will or may



- fall due and its assets will mature,
- (iii) the nature and scale of its operations,
  - (iv) the risks inherent in those operations, and in the operations of any other company in the same group so far as capable of affecting the applicant or licensed institution, and
  - (v) any other factors appearing to the Commission to be relevant,
- (c) it makes or, as the case may be, will make adequate provision for –
- (i) depreciation or diminution in the value of its assets (including provision for bad or doubtful debts),
  - (ii) liabilities which will or may fall to be discharged by it, and
  - (iii) losses which it will or may incur, and
- (d) it maintains or, as the case may be, will maintain –
- (i) adequate accounting and other records of its business, and

- (ii) adequate systems of control of its business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), the Commission shall also have regard, in determining whether an applicant or licensed institution is to be regarded as conducting its business in a prudent manner, to the following –

- (a) whether the applicant or licensed institution has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,
- (b) the systems of control and record keeping of the applicant or licensed institution for business undertaken or contemplated and the provision made by it for the proper maintenance and development of such systems,
- (c) the complaints history of the applicant or licensed institution, and
- (d) where the applicant or licensed institution is part of a group, whether the structure or organisation of the group hinders effective supervision.

(4) For the purposes of –

- (a) subparagraph (2)(a), an appropriate amount is –

- (i) an amount commensurate with the nature and scale of its operations, and
  - (ii) an amount and nature sufficient to safeguard the interests of its depositors, investors and customers and potential depositors, investors and customers, having regard to –
    - (A) the nature and scale of its operations,
    - (B) the risks inherent in those operations, and in the operations of any other company in the same group so far as capable of affecting the applicant or licensed institution, and
    - (C) any other factors appearing to the Commission to be relevant,
- (b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensed institution, the Commission may, to such extent as it thinks appropriate, take into account –
- (i) the assets of the applicant or licensed institution, and
  - (ii) the facilities which are available to it and which are capable of providing liquidity within a

reasonable period, and

(c) subparagraph (2)(d) –

(i) records and systems shall not be regarded as adequate unless they are such as to enable –

(A) the business of the applicant or licensed institution to be managed prudently, and

(B) the applicant or licensed institution to comply with the duties imposed on it by or under the provisions of this Law or any enactment listed in paragraph 3(2)(f), and

(ii) in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the applicant's or licensed institution's directors.

**Information required by the Commission.**

7. The applicant, licensed institution and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed institution, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

**Notification to, and approval by, board of directors of certain matters.**

8. The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on in such a way as to ensure that –

- (a) the board of directors are notified promptly if the applicant or institution receives information which could have a material effect on assets and consequently on its levels of provisions, capital base and overall strength, and
- (b) all transactions with associates or associated parties receive prior approval by the board of directors and are not on more favourable terms than transactions with persons who are not associates or associated parties.

**Risk management.**

9. The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on –

- (a) with a sufficient number of individuals employed in the Bailiwick to conduct all essential functions, which includes risk management functions,
- (b) in such a manner as to ensure that permanent compliance and risk management functions are

conducted in the Bailiwick to assess the risks and legal compliance of all business conducted from or within the Bailiwick,

- (c) with an internal audit function, or an audit function that is compliant with the published guidance of the Commission.

**Power to make regulations.**

10. The Committee may make regulations amending the provisions of this Schedule.

### SCHEDULE 3

#### MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

(a) that other –

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of a company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power,

- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to items (c) and (d), any shares held or power exercisable –
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for



securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

**Power to make regulations.**

5. The Committee may make regulations amending the provisions of this Schedule.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

**REVISION OF FINANCIAL SUPERVISORY AND REGULATORY LAWS**

Letter of Comment from the Policy & Resources Committee on the Revision of  
Financial Supervisory and Regulatory Laws.



# Policy & Resources Committee

Policy & Resources Committee  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

24 April, 2020

Dear Sir

## **Letter of Comment: Policy Council – Revision of the Financial Supervisory and Regulatory Laws**

At its meeting on 28<sup>th</sup> October 2015, the States of Deliberation approved a policy letter and related propositions from the Policy Council on the Revision of the Financial Supervisory and Regulatory Laws. This letter proposed revision of the supervisory and regulatory laws governing the Bailiwick's financial services industry so as to enable the Bailiwick to continue to meet international supervisory and regulatory standards and to eliminate unjustified inconsistencies in terminology, process and procedure across the investment, banking, fiduciary and insurance sectors. A large body of work has been undertaken since then on this project, known colloquially as the Revision of Laws Project.

The executive summary of the 2015 policy letter is quoted in part below for ease of reference:

- 1.1.1 *The Guernsey Financial Services Commission (the “GFSC”) has undertaken an extensive public consultation on revising the Bailiwick’s supervisory and regulatory laws to maintain the Bailiwick’s reputation as an efficient and well- regulated international finance centre. This has been part of the GFSC’s Revision of Laws project.*
- 1.1.2 *The proposals in this Policy Letter represent the outcome of that public consultation process and follow discussions between representatives of the GFSC, the Commerce and Employment Department (the “C&E Department”), and the Policy Council.*
- 1.1.3 *The Finance Sector Strategy published by the C&E Department in 2014 advocates the retention of an internationally respected regulatory*

*environment for the financial services industry. This environment should include a proportionate regulatory approach and facilitate innovation in the industry.*

*1.1.4 The proposals in this Policy Letter will help to ensure that goal is achieved by enabling the Bailiwick to continue to meet international regulatory standards, whilst at the same time being able to respond quickly to change and innovation in the financial services industry. In this way the Bailiwick will remain a well- regulated and attractive jurisdiction for financial services business.*

In light of the enormous scale of the legislative package arising from that approval, the Committee considers it important to place this letter of comment before the States.

The legislation listed below has been drafted as a result of the approval and accompanies this letter:

**The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020;**

**The Banking Supervision (Bailiwick of Guernsey) Law, 2020;**

**The Protection of Investors (Bailiwick of Guernsey) Law, 2020;**

**The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.**

It should be noted that the four laws to be considered by the States at this stage are in fact the first phase of the Revision of Laws Project. Two Ordinances, relating to the insurance sector, are to be presented to the States at the end of 2020. These too will be significant in size.

The four laws currently being considered by the States amount to over 1,100 pages of text. It has required a very significant effort by all involved, particularly by the Law Officers Chambers to bring the legislation to the States. This project has been by far the largest legislative drafting exercise undertaken in Guernsey and the Committee wishes to thank the Law Officers Chambers for its role in preparing and finalising the legislation. It also wishes to thank the Guernsey Financial Services Commission; representatives of the private sector, whose job is not to assist with drafting but who nonetheless devoted so much of their valuable time; present and past members of the Committee for Economic Development; and officers of the States for their significant work on the project.

Yours faithfully

G A St Pier  
President

L S Trott  
Vice-President

A H Brouard

J P Le Tocq

T J Stephens