

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

**THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE,  
2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021", and to direct that the same shall have effect as an Ordinance of the States.

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 Ordinance 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 had 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 Markets in Financial Instruments Directive regime); 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.

This Ordinance amends the Insurance Business (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law"), as amended, with the enforcement, sanctions and penalty 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, the amendments have enabled the text of the 2002 Law to be updated and brought into alignment with the other regulatory Laws, that is, the Banking Supervision (Bailiwick of Guernsey) Law, 2020, the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

# **The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021**

**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>, and in exercise of the powers conferred on them by section 85 of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>c</sup> and all other powers enabling them in that behalf, hereby order:-

## **Amendment of Insurance Business Law.**

1. The Insurance Business (Bailiwick of Guernsey) Law, 2002 is further amended as follows.

2. In section 1(2)(a) after "letterheads" insert "or otherwise".

3. After section 1(2A) insert the following subsection –

"(2B) For the purposes of subsection (2) –

(a) an application for a direction under that subsection shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,

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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.

<sup>c</sup> Order in Council No. XXI of 2002; there are amendments not material to this enactment.

- (b) the application shall be accompanied by such fee as may be prescribed by regulations under section 94,
- (c) the application may be refused or granted subject to such conditions as the Commission may consider necessary or expedient,
- (d) the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable,
- (e) the direction may be revoked or varied at any time by the Commission by written notice to the person to whom it was made,
- (f) any such variation may include the attachment of such conditions, or the removal or modification of such conditions previously attached, as the Commission may think fit,
- (g) the direction shall, subject to the provisions of paragraph (e), be valid for such period (if any) as the Commission may determine,
- (h) if, whether before or after the making of a direction, there is any change of fact or circumstance, or any change to any of the information supplied to the

Commission by or on behalf of the applicant or (as the case may be) the person to whom the direction was granted for the purposes of the application or direction (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant or that person shall inform the Commission of the change, as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and

- (i) a failure to comply with any requirement arising by virtue of paragraph (h) is, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of the direction."

4. For section 1(7) substitute the following subsection –

"(7) A person who without reasonable excuse fails to inform or give notification to the Commission in accordance with subsection (2B)(h) or (5) is guilty of an offence."

5. In section 4 –

- (a) in subsection (2)(b), the words "subject to the provisions of section 61," are repealed,
- (b) for subsection (3), substitute the following subsection –

"(3) In determining an application under subsection (2) the Commission may have regard to any matter to which it might have regard under section 7 of this Law or section 29 of the Enforcement Powers Law when considering whether or not to grant an application from the licensed insurer concerned for a licence or whether or not to revoke a licence held by that licensed insurer.", and

(c) subsections (4) and (5) are repealed.

6. In section 5(c), for "an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994" substitute "a licensed banking institution".

7. In section 6 –

(a) in subsection (3) –

(i) for "may by regulation" substitute "may by rules under sections 38A to 38C",

(ii) for paragraph (d) substitute the following –

"(d) anything else prescribed by rules of the Commission under sections 38A to 38C.",

(b) for subsection (4), substitute the following –

"(4) Upon receipt of an application under this section 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 and other documents as the Commission may reasonably require for the purpose of determining the application.",

(c) in subsection (5) –

(i) for “Any information or statement” substitute “Any information, statement or other document”,

(ii) in paragraph (a), for "that information or statement" substitute "that information, statement or other document",

(iii) in paragraph (b), after "statement" insert ", document",

(d) after subsection (7) insert the following subsection –

"(7A) An application under this section 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.",

(e) in subsection (8), for "Performance" substitute "Finance",



(f) for subsection (9), substitute the following subsection –

"(9) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine); and a failure to do so shall, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, be a ground for the refusal or revocation of a licence.", and

(g) after subsection (9), insert the following subsection –

"(10) If at any time a licensed insurer proposes to carry on insurance business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (8).".

8. In section 7 –

(a) in subsection (1) –

(i) in paragraph (a), before "grant" insert "subject to the provisions of subsection (2)",

(ii) in paragraph (b), the words "subject to the provisions of section 61," are repealed,

- (b) in subsection (2) –
  - (i) in paragraph (a), after the words "Schedule 7" insert "(the "**minimum criteria for licensing**)",
  - (ii) for paragraph (a)(ii), substitute the following–
    - "(ii) 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",
  - (iii) in paragraph (f) –
    - (A) in subparagraph (i), after "company" insert "with a share capital",
    - (B) in subparagraph (ii), after "company" insert "with a share capital",
  - (iv) in paragraph (g) –
    - (A) for “company” substitute "body",
    - (B) in subparagraph (i), the words "and of the applicant's policyholders and potential policyholders" are repealed,
    - (C) in subparagraph (ii), for "criteria of Schedule 7"

substitute "minimum criteria for licensing",

- (v) in paragraph (h), after the words "business of the applicant" insert "(and in this paragraph **"incidental"** means no more than 5% of the total premium income of the insurer in any financial year)",
- (vi) in paragraph (i), the words "and of the applicant's policyholders and potential policyholders" are repealed,
- (c) in subsection (3) –
  - (i) for the words before paragraph (a) substitute the following –

"In considering whether or not to grant an application under section 6, the Commission, without limitation and so far as relevant –",
  - (ii) paragraph (a) is repealed,
  - (iii) for paragraph (b), substitute the following–

"(b) may take into account -

    - (i) the provisions of any code of practice or guidance issued under this Law or section 57 or 120 of the Enforcement Powers Law, and

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

- (d) subsection (5) is repealed.

9. In section 8 –

- (a) in subsection (1), after "determine" insert "or as may be prescribed by rules of the Commission under sections 38A to 38C",
- (b) in subsection (2)(b), after "revocation" insert ", expiry", and
- (c) in subsection (3), after "Commission," insert "and subject to the provisions of rules of the Commission under sections 38A to 38C".

10. For section 9 substitute the following section –

**"Period of validity of insurance licence.**

9. A licence shall (unless any condition of the licence provides for any other period of duration) continue to be valid until it is revoked under section 29 of the Enforcement Powers Law or surrendered under section 15 of this Law."

11. Section 10 is repealed.

**12.** In section 11 –

- (a) in subsection (3) the word "Current" is repealed,
- (b) in subsection (3) for paragraphs (a) and (b), substitute the following paragraph –

"(a) the holder of a supervised role in respect of the insurer, and",

- (c) for subsection (4), substitute the following subsection –

"(4) A licensed insurer shall comply with the provisions of this Law; and any failure by a licensed insurer so to comply shall (without prejudice to any other penalty or sanction in respect thereof) have effect for the purposes of this Law as a contravention of a condition of that insurer's licence."

- (d) in subsection (5), for "section 7 of the Protected Cell Companies Ordinance, 1997" substitute "section 438 of the Companies (Guernsey) Law, 2008", and
- (e) subsections (6) and (7) are repealed.

**13.** In section 12 –

- (a) in subsection (1), the words "subject to the provisions of section 61," are repealed,

- (b) in subsection (3), for the words "subject to the provisions of section 61," substitute "by notice in writing,"
- (c) in subsection (4) –
  - (i) the words ", the policyholders and potential policyholders of the licensed insurer" are repealed,
  - (ii) in paragraph (e) for the words "director, controller, manager, partner, employee or general representative of" substitute "person who is the holder of a supervised role in respect of, or who is an officer, employee, auditor or actuary of,"
  - (iii) in paragraph (h), for the word "bank" substitute "trustee, custodian, licensed fiduciary, licensed banking institution or person of such other class or description as may be",
  - (iv) for paragraph (h)(i), substitute the following subparagraph –
    - "(i) assets kept in the custody of a trustee, custodian, licensed fiduciary, licensed banking institution or other person pursuant to that condition shall not, so long as the condition 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>d</sup>), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission,"

- (v) for paragraph (h)(ii), substitute the following subparagraph –

"(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 licensed insurer in contravention of that condition shall be ineffective against any claim by any liquidator of the licensed insurer (and such a condition 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

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<sup>d</sup> Order in Council No. III of 1993; there are amendments not material to this enactment.

contrary),",

(vi) for paragraph (k), substitute the following paragraph –

"(k) require a licensed insurer 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 licensed insurer 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 licensed  
insurer),

in whatever form and manner and at whatever



time the Commission may reasonably determine,"

(vii) in paragraph (m), the words "with responsibility, under the terms of his appointment, for ensuring compliance by the licensee with the provisions of this Law (and any Ordinance, regulation or rule made under it)" are repealed,

(viii) in paragraph (n), after the word "plan" insert "acceptable to the Commission",

(d) for subsection (6), substitute the following subsection –

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

(e) for subsection (8), substitute the following subsection –

"(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a licence or (as the case may be) to suspend or revoke a licence.", and

(f) subsections (9) and (10) are repealed.

**14.** Section 14 is repealed.

**15.** In section 15 –

(a) in subsection (4) -

(i) the words "and subject to the provisions of section 61," are repealed,

(ii) for "finally disposed of or withdrawn" substitute "determined",

(b) in subsection (5), after the word "unless" insert "prior",

(c) in subsection (6) –

(i) the words "subject to the provisions of section 61," are repealed,

(ii) in paragraph (b) -

(A) the word "best" is repealed,

(B) the words ", the insurer's policyholders or potential policyholders" are repealed, and

(iii) in paragraph (c), for "section 18" substitute "section 49 of the Enforcement Powers Law", and

(d) for subsection (7), substitute the following subsection –

"(7) Upon the surrender of a licence no fee paid or payable by the licensed insurer concerned pursuant to regulations under section 94 shall be refunded, remitted, reduced or waived."

16. After section 15 insert the following cross heading and section –

*"Principles of conduct*

**Principles of conduct for licensed insurers.**

15A. (1) A licensed insurer 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 insurance business in relation to which it is acting as licensed insurer, 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."

17. For section 16 substitute the following section -

**"Power to issue directions.**

16. (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 the directed person 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 licensee,

(b) subject to the provisions of subsection (5), a former licensee,

(c) a person carrying on insurance 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 licensee, 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), directions thereunder 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, restrict or impose limitations upon -

- (i) the carrying on of insurance business and other business, the acceptance or repayment of client and policyholder assets and monies, the granting of credit or the making of investments,
- (ii) the carrying on of insurance business, or any class or description of insurance business, in or from within any place, or any particular place, outside the Bailiwick -
  - (A) by the directed person,
  - (B) by any undertaking established by the directed person (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (C) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (c) prohibit the directed person from soliciting

(whether at all or in any specified manner)  
insurance business and other business, either  
generally or from specified persons or classes or  
descriptions of persons,

(d) prohibit the directed person 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, auditor or actuary of,  
the directed person,

(f) specify requirements to be fulfilled otherwise  
than by action taken by the directed person,

(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 manner and  
containing such information and particulars, as  
may be so specified,

(h) 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 banking 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 banking 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>e</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

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<sup>e</sup> Order in Council No. III of 1993; there are amendments not material to this enactment.



person 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,

- (i) where the directed person is a licensee, and without prejudice to paragraph (h), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensed fiduciary, licensed banking 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 clients or policyholders or belong to –

- (A) an investment company the shares in which belong to clients or policyholders, or

- (B) some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by clients or policyholders,
- (j) 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,

- (k) 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 that person's clients or policyholders to another licensee acceptable to the Commission,
- (l) 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),
- (m) require the directed person to appoint a compliance officer,
- (n) require the directed person to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission,
- (o) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as

may be specified,

- (p) contain such ancillary, incidental and supplementary provision as the Commission may determine.

(5) A direction may be imposed on a former licensee only within a period of six years immediately following the date on which the former licensee 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 licensee within that six year period may, in accordance with subsection (6), 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 licensee.

(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 licensee 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 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) A person who contravenes any provision of a direction under subsection (1) is guilty of an offence.

(9) Where the directed person is a licensee, the contravention of a direction under this section –

- (a) is, whether or not constituting an offence under subsection (8), a ground for the suspension or revocation of the 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.

(10) 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.

(11) 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 7 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 licence.

(12) 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.

(13) 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."

18. After section 16 insert the following cross heading and section –

*"Supervised roles*

**Supervised roles.**

**16A.** (1) A person who, in relation to a body, is appointed as or otherwise becomes –

- (a) a general representative,
- (b) a director,
- (c) a controller, or
- (d) a partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership),

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 25.

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

- (a) a money laundering reporting officer,
- (b) a money laundering compliance officer,
- (c) a compliance officer,
- (d) an actuary, or



(e) an "**other supervised manager**", that is to say, a person appointed –

(i) 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 insurance business in respect of which the body is or will be licensed,

(ii) to any other role in order to enable the body to fulfil the requirements of paragraph 4 of Schedule 7 (business to be directed by at least two individuals),

but not including a person who falls into any other category of supervised role set out in subsection (1) or (3) or in any other paragraph of this subsection,

shall be deemed for the purposes of this Law to be the holder of a "**vetted supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 26.

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

- (a) a significant shareholder,
- (b) an auditor, or
- (c) 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 27.

(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 that person 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."

**19.** In section 17 –

- (a) for subsection (1), substitute the following subsection –

"(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 insurers who are for the time being licensed insurers ("**the list**").",

(b) after subsection (1), insert the following subsection –

"(1A) 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.",

(c) in subsection (2), the words "maintained under subsection (1)" are repealed,

(d) for subsection (2)(e), substitute the following paragraph –

"(e) 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 licence,

(ii) any directions given to the insurer,

(iii) any enforcement requirements imposed on the insurer or any other person in connection with the licence, and

(iv) without prejudice to subparagraph (i) or (ii), any condition of the insurer's licence imposed under section 12(4)(h) or direction imposed on the insurer under section 16(4)(h) providing that any assets shall not be removed from the custody of a trustee, custodian, licensed fiduciary, licensed banking institution or other person or 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>f</sup>), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission, and",

(e) for subsection (4)(a)(i), substitute the following subparagraph –

"(i) any grant, suspension, revocation, surrender or expiry of a licence, or",

(f) in subsection (4), in the text following paragraph (b), the words

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<sup>f</sup> Order in Council No. III of 1993; there are amendments not material to this enactment.

"maintained under subsection (1)" are repealed, and

(g) for subsection (6) substitute the following subsections –

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

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

(8) 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."

20. Part II (sections 18 to 24) is repealed.

21. For sections 25 to 28 (and the preceding cross heading), substitute the following sections and cross heading –

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

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

25. (1) A person ("A") shall not become the holder of an approved supervised role in respect of a licensed insurer unless -

- (a) A or the licensed insurer has notified the Commission in writing of the intention that A should become the holder of such a role, and
- (b) the Commission has notified A or the licensed insurer in writing that there is no objection to A 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 94;

and following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require that person 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 insurer,

- (b) that the interests of policyholders or clients or potential policyholders or clients of the licensed insurer 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 insurer 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 insurer, 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 insurer, 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 60) 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 insurer or class, description or category of person or licensed insurer 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.**

26. (1) A person (“B”) shall not become the holder of a vetted supervised role in respect of a licensed insurer unless -

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

(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 94;

and following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require that person 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 insurer,

(b) that the interests of policyholders or clients or potential policyholders or clients of the licensed insurer 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 insurer 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 insurer, 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 insurer, 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 60) 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 insurer or class, description or category of person or licensed insurer 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.**

27. (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 insurer, the licensed insurer 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 94;

and following receipt of such notice from a licensed insurer, the Commission may by notice in writing require the licensed insurer 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 insurer or class, description or category of licensed insurer 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 insurer ("A") who fails to give notice in accordance with this section is guilty of an offence unless A shows (for the avoidance of doubt, on a balance of probabilities) that A was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case A is guilty of the offence if A fails to give such notice within a period of 14 days immediately following the day on which A became or ought reasonably to have become so aware."

**22.** Sections 28A to 28C (and the preceding cross heading) are repealed.

**23.** In section 29 –

- (a) for subsection (1), substitute the following subsection –

"(1) A licensed insurer shall (subject to the provisions of section 25) appoint, and at all times maintain the appointment of, as the insurer's general representative, to act generally on behalf of the insurer and to accept service of any document on behalf of the insurer, either -

- (a) a person who is an executive director of the insurer who is (subject to the provisions of subsection (4)) ordinarily resident in Guernsey, Herm or Jethou or, if no such director of the insurer is ordinarily so resident, an employee or agent of the insurer who is (subject as aforesaid) ordinarily resident in Guernsey, Herm or Jethou, or

- (b) a licensed insurance manager.",

- (b) in subsection (2), the words "(or any Ordinance, regulation, rule or code under it)" are repealed, and

- (c) for subsection (4), substitute the following subsection –

"(4) Notwithstanding the provisions of subsection (1)(a), the Commission may in any particular case in respect of an insurer which is an Alderney body or a Sark body, waive the requirement that the executive director, employee or agent of the insurer must be ordinarily resident in Guernsey, Herm or Jethou and instead permit that person to be a person who is ordinarily resident in the Island of Alderney or, as the case may be, the Island

of Sark."

24. For section 31(3) substitute the following subsection –

"(3) The provisions of this section are in addition to the provisions of sections 303 to 305 of the Companies (Guernsey) Law, 2008 and sections 61 and 62 of the Companies (Alderney) Law, 1994."

25. In section 32 –

- (a) in subsection (1)(a) and (b) after "company" insert "with a share capital",
- (b) in subsection (2) after "company" insert "with shareholders",
- (c) in subsection (5)(a) before "rescind" insert "vary or", and
- (d) in subsection (6) after "account" insert "(if any)".

26. For section 33 substitute the following section –

**"Annual return of licensed insurer.**

33. (1) A licensed insurer shall, in respect of each financial year of the insurer (and/or at such other times or intervals and in respect of such other periods as may be prescribed), prepare an annual return in such form, containing such particulars and accompanied by such information and documents (which shall be in such form) as the Commission may by rule require -

- (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.

(2) Rules under subsection (1) may, without limitation, require the annual return to include or be accompanied by –

- (a) an up-to-date business plan,
- (b) a calculation of the licensed insurer's capital resources required to be maintained in accordance with rules of the Commission under sections 38A to 38C,
- (c) a declaration of reliance on reinsurers, in such form, containing such particulars and

accompanied by such information and documents (which shall be in such form) as the Commission may require,

- (d) a 12 month financial forecast,
- (e) audited accounts,
- (f) a copy of the auditors' management letter or confirmation from the general representative that the auditors have confirmed that no auditors' management letter is required to be issued,
- (g) a certificate signed by the general representative or other prescribed person confirming -
  - (i) compliance throughout the period covered by the annual return with the capital resources requirements applicable to the licensed insurer by virtue of rules of the Commission under sections 38A to 38C,
  - (ii) compliance throughout the said period with the insurers' code of conduct or any other code issued under this Law,
  - (iii) without prejudice to subparagraphs (i)



and (ii), compliance throughout the said period with the provisions of this Law, the appointed Laws and any other prescribed enactment,

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

(v) that, where applicable, an actuarial report has been prepared and deposited in accordance with the provisions of this Law,

(h) 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 insurer,

(i) the number of staff employed,

(j) the number of policyholders and clients, whether in total or whether in respect of different classes or descriptions of insurance business,

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

(l) such other information and documents as may be

prescribed or as the Commission may determine;

and where the Commission has, under section 12(4)(l) or 16(4)(l), imposed a condition or direction (as the case may be) on a licensed insurer requiring the preparation of consolidated accounts, then all the information and documents required by rules under subsection (1) to be included in or to accompany the insurer's annual return shall (except to the extent that rules under subsection (1) make provision to the contrary) be prepared and submitted on a consolidated basis.

(3) Rules under subsection (1) 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 94 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 insurers who also hold a licence under  
any of the regulatory Laws.

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

(5) A licensed insurer which contravenes any provision of  
this section is guilty of an offence."

27. For section 34 substitute the following section –

**"Appointment of auditors.**

34. (1) A licensed insurer shall appoint auditors as auditors to the insurer; and whenever an appointment under this section comes to an end the insurer 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 insurer.

(2) Without prejudice to the provisions of section 27, if an appointment as auditor under this section comes to an end the licensed insurer 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 27, a licensed insurer which is a company shall immediately give written notice and explanation to the Commission –

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

(4) An auditor of a licensed insurer 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 the auditor –

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

and a notice under paragraph (a) shall contain -

- (i) a statement to the effect that there are no circumstances connected with the auditor ceasing to be auditor which the auditor 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 insurer as they apply in relation to a licensed insurer, but only, subject to the provisions of subsection (6), for a period of six years immediately following the date on which the former licensed insurer

ceased to hold a licence.

(6) Where an auditor of a former licensed insurer 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 the auditor's term of office, or
- (b) signs a qualified audit report on the accounts of the former licensed insurer,

by reason of any fraud of –

- (i) the former licensed insurer, 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 licence, the time limit of six years specified in subsection (5) does not apply.

(7) A licensee or former licensee 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 insurer, former licensed insurer or auditor or class, description or category of licensed insurer, former licensed insurer 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."

28. In section 35 –

(a) in subsection (3)(b)(i), after "sheet" insert "or statement of financial position",

(b) for subsection (4)(b), substitute the following paragraph –

"(b) any requirement of or under the provisions of this Law, including (without limitation) any requirement arising by virtue of any condition or direction imposed under this Law," and

(c) after subsection (7), insert the following subsection –

"(7A) 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."

29. For sections 37 and 38 substitute the following sections –

**"Deposit of annual return, accounts, etc. with Commission."**

37. (1) The annual return required to be prepared by virtue of section 33, the accounts required to be prepared by virtue of section 35, the report of the auditor made in pursuance of section 36 and the actuarial report (if applicable) required to be prepared by virtue of section 41, together with all accompanying information and documents, shall be deposited with the Commission within a period of four months (or such additional time as the Commission may in any particular case allow) beginning on the close of the financial year to which the accounts relate or at such other times or intervals as the Commission may by rule prescribe.

(2) The Commission may, without prejudice to any other provision of this Law, specify the form of any particular document or of any class of documents required to be deposited with it under subsection (1) and the form and manner in which and means by which any document or class of documents must be deposited; and if it does so then the document (or, as the case may be, any document of that class) is deemed not to have been deposited with the Commission until it is deposited in the specified form and manner and by the specified means.

(3) Without prejudice to the provisions of section 33(1) and subsection (1) of this section, where a licensed insurer wishes to change the date of the close of its financial year, and thereby to extend the period of its financial year, it must, unless the Commission directs otherwise in any particular case, submit an annual return in respect of the period up to the anniversary of the end of the period of the last annual return; but for the purposes of this subsection the Commission may, at the request of the insurer, modify the requirements of section 33 and of any rules thereunder in their



application to that insurer.

(4) The Commission shall consider the documents deposited under subsections (1) and (2) and if any such document appears to the Commission to be inaccurate or deficient or otherwise non-compliant with the provisions of this Law in any respect the Commission may communicate with the insurer with a view to requiring the correction of any such inaccuracy and the making good of any such deficiency or non-compliance

(5) A licensed insurer which contravenes any provision of this section is guilty of an offence.

**Friendly societies and insurers authorised in European Economic Area, etc.**

38. (1) This Part of this Law applies, subject to the adaptations set out in subsection (2), in relation to -

- (a) a friendly society registered under an enactment relating to friendly societies and recognised by the Commission as being such a society,
- (b) a syndicate or pool, and
- (c) a person other than a Bailiwick body if -
  - (i) the law of the United Kingdom or a State within the European Economic Area, or of any other country recognised by the Commission for the purposes of this section, recognises that person as a

national of the United Kingdom or that  
or another such State or country, and

- (ii) the only insurance business which that  
person carries on in the Bailiwick is  
business of a description which that  
person is authorised to carry on in the  
United Kingdom or a State within the  
European Economic Area or in any other  
country recognised by the Commission  
for the purposes of this section and  
which would be lawfully carried on if it  
were carried on in the United Kingdom  
or that State or country.

(2) The adaptations referred to in subsection (1) of this  
section are as follows -

- (a) a general representative within section 29(1)(a)  
must be ordinarily resident in the Bailiwick, but  
need not be an executive director, employee or  
agent of the insurer,
- (b) sections 25 to 27, 30 to 32, 34 to 36 and 39 to 43 of  
this Law, and sections 25 to 27 of the  
Enforcement Powers Law, do not apply, and
- (c) such other adaptations as the Commission may  
prescribe by regulation.

(3) This section is without prejudice to sections 12 and 68 to 74 of this Law, and sections 8, 9, 12 and 13 of the Enforcement Powers Law, and is not to be construed as restricting the Commission's powers under those sections."

30. In section 38A –

(a) after "in relation to" insert "insurance business and", and

(b) after "generally as to" insert "the conduct of, and".

31. For sections 38B and 38C (and the cross heading between them) substitute the following sections and cross heading –

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

**38B.** Rules under section 38A may, without limitation -

(a) set out general conditions applicable to licensed insurers (and accordingly make provision for matters in respect of which conditions may be imposed under section 12),

(b) prescribe the manner in which licensed insurers 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) client and policyholder 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 insurance business being carried on,
- (vi) insurance cover of any class or description,

- (vii) financial resources,
  - (viii) business assets,
  - (ix) technical provisions,
  - (x) capital and capital resources requirements,
  - (xi) funds and liquidity requirements, and
  - (xii) the calculation, maintenance and approval of anything described in the above subparagraphs,
- (c) prohibit licensed insurers from carrying on, or holding themselves out as carrying on, insurance 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 insurers of any discretionary powers afforded to them by clients or policyholders,
- (e) require licensed insurers to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any insurance business, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed insurers and their servants and agents and, without limitation, require licensed insurers to impose and enforce restrictions on the activities carried on by their servants and agents, and enable or require information obtained in the course of carrying on any class or description of the insurance business of a licensed insurer to be withheld from persons involved in carrying on any other class or description of the insurance business of that licensed insurer,
- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of insurance 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 insurers to make provision for the protection of clients and policyholders 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, 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 insurers 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 insurers,
  - (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 insurers with -
- (i) other licensed insurers,
  - (ii) other persons carrying on insurance business,
  - (iii) other persons holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
  - (iv) clients and policyholders and potential clients and policyholders (including



those of persons described in subparagraphs (i) to (iii)), and

- (v) the Commission,
- (n) impose on licensed insurers 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 insurers, and
- (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, licences and other relevant documents, including (without limitation) provision –
  - (i) prescribing the information to be furnished by an applicant for a relevant document, and the manner in which that information is 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, 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.

*General provisions as to rules*

**Making and effect of contravention of rules.**

38C. (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 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 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 of this Law under which they are made.

(3) Without prejudice to any other provision of this Law or of 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 that person 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."

32. In section 39(1), after "section 37(1)" insert "or any rule made thereunder".

33. In section 40 –

- (a) for subsection (2), substitute the following subsection –

"(2) Without prejudice to the provisions of section 27, if an appointment as actuary under this section comes to an end the licensed insurer

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.",

(b) in subsection (3), for "make a fresh appointment" substitute "make an appointment", and

(c) after subsection (6), insert the following subsection –

"(7) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer or actuary or class, description or category of licensed insurer or actuary 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."

**34.** In section 41(1)(c), after "section 37(1)" insert "or at such other time as the Commission may by rule prescribe".

**35.** For section 43(2) substitute the following subsection –

"(2) The provisions of subsection (1)(e) are in addition to the provisions of sections 303 to 305 of the Companies (Guernsey) Law, 2008 and sections 61 and 62 of the Companies (Alderney) Law, 1994."

**36.** For section 49 substitute the following section –

**"Notification of acquisition of significant shareholding.**

49. (1) A person who becomes a significant shareholder in relation to a licensed insurer which is a company shall, within a period of 14 days immediately following the day of that event, give notice in writing of the event to the Commission.

(2) 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 94;

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

(3) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensed insurer or class, description or category of person or licensed insurer 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.

(4) A person ("A") who fails to give notice in accordance with subsection (1) is guilty of an offence unless A shows (for the avoidance of doubt, on a balance of probabilities) that A was not aware that the facts or

circumstances were such as to require the giving of such notice; but in such a case A is guilty of the offence if A fails to give such notice within a period of 14 days immediately following the day upon which A became or ought reasonably to have become so aware."

37. After section 49, substitute the cross heading with the following cross heading –

*"Notification of additional or reduced voting power".*

38. Section 49A is repealed and the following sections are inserted immediately thereafter –

**"Notification of acquisition of additional voting power.**

49B. (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 licensee 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 –

(i) a further 5% or more of that voting power,  
or

(ii) any successive such percentage,

(an “**additional controller holding**”),

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

(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 give approval, and

(b) such fee as may be prescribed by regulations under section 94;

and following receipt of such notification from any person, the Commission may by notice in writing require that person 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 refusing approval for the purposes of 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 exercise, or control the exercise of, any voting power described in subsection (1) in respect of the licensee or (where the licensee is a company) any other company of which the licensee is a subsidiary,

- (b) that the interests of policyholders or clients or potential policyholders or clients of the licensee 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 licensee 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 licensee, 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 licensee, or
  - (ii) if any of those criteria were not so fulfilled, that that person would be likely to



undertake remedial action.

(4) A notice refusing approval for the purposes of this section shall (without prejudice to the provisions of section 60) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

(5) 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 (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 on the person concerned refusing its approval of the change.

(6) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensee or class, description or category of person or licensee 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.

(7) A person ("B") who fails to give notice in accordance with subsection (1) is guilty of an offence unless B shows (for the avoidance of doubt, on a balance of probabilities) that B was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case B is guilty of the offence if B fails to give such notice within a period of 14 days immediately following the day upon which B became or ought reasonably to have become so aware.

**Notification of reduction of voting power.**

49C. (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 licensee 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 -

(i) 5% or more of that voting power, or

(ii) any successive such percentage,

(a “**reduced controller holding**”),

that person shall notify the Commission of the fact.

(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, and

- (b) such fee as may be prescribed by regulations under section 94;

and following receipt of such notification from any person, the Commission may by notice in writing require that person to furnish such additional information or documents as the Commission may require.

(3) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensee or class, description or category of person or licensee 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.

(4) A person ("C") who fails to give notice in accordance with subsection (1) is guilty of an offence unless C shows (for the avoidance of doubt, on a balance of probabilities) that C was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case C is guilty of the offence if C fails to give such notice within a period of 14 days immediately following the day upon which C became or ought reasonably to have become so aware."

**39.** Part IV (sections 50 to 58) is repealed.

**40.** In section 59, the words "or any Ordinance, regulation or rule made under it" are repealed.

**41.** For sections 60 to 63 (and associated cross headings) substitute the following sections and cross headings –

*"Notice of decisions"*

**Notice of decisions of Commission.**

60. (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 63, 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 62(1), a statement of the reasons for the decision (but subject to the provisions of section 62(2)), and

- (e) shall give particulars of the right of appeal conferred by section 63,

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, auditor or actuary, 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 that person) together with particulars of the right of appeal conferred by section 63.

#### *Representations and appeals*

#### **Representations concerning proposed decisions of Commission.**

61. (1) Before the Commission makes a decision in respect of

which a right of appeal is conferred by section 63, other than a decision to serve a notice under section 26, 49B or 68, 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 take 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 62(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 62(2)), and
- (f) giving particulars of the right of appeal which would be exercisable under section 63 if the Commission were to take 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, auditor or actuary, 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 that person) together with particulars of the right of appeal which would be exercisable under section 63 if the Commission were to take 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.

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



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

- (a) under section 60(1) or (2) of a decision in respect of which a right of appeal is conferred by section 63, or
- (b) under section 61(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) shall 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 63.

**Appeals against decisions of Commission.**

63. (1) A person ("A") aggrieved by a decision of the Commission –

- (a) to refuse an application by A for a licence,
- (b) to impose (whether at the time of issue of the licence or subsequently), vary or rescind any condition in respect of A's licence,
- (c) to refuse to vary or rescind any such condition,
- (d) not to allow the surrender of A's licence to be withdrawn, or to refuse consent to the surrender of A's licence,
- (e) to refuse consent under section 4(1)(b) to carry on, or to hold A out as carrying on, insurance business in or from within a country outside the Bailiwick, or to revoke any such consent, or to impose, vary or rescind any condition in respect of any such consent, or to refuse to vary or rescind any such condition,
- (f) to give A directions under section 16 or 64 or to vary or rescind any direction so given,

- (g) to refuse to vary or rescind any direction so given,
- (h) under section 25 (notification of approved supervised roles), to serve a notice of objection,
- (i) under section 26 (notification of vetted supervised roles), to serve a notice of objection,
- (j) to modify, under section 30(2), any prohibition, restriction or requirement relating to capital resources imposed by or under rules of the Commission under sections 38A to 38C,
- (k) to vary or rescind any modification made by the Commission under section 30(2),
- (l) to impose, vary or rescind any condition in respect of any such modification,
- (m) to serve a notice refusing approval for the purposes of section 49B (notification of acquisition of additional voting power),
- (n) to omit, pursuant to the provisions of section 62(2), any matter from a statement of reasons provided pursuant to section 62(1),

- (o) to serve a notice on A under section 68,
- (p) under section 68A, to appoint or require the appointment of a skilled person,
- (q) 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
- (r) being a decision of such 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, auditor or actuary, 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 that person's 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.

- (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 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 described in subsection (1)(b), (d) (not to allow the surrender of a licence to be withdrawn), (f), (o) or (p) 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 61(6).

(8) For the purposes of determining an appeal under this section against a decision described in subsection (1)(n) to omit, pursuant to the provisions of section 62(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 the appellant."

42. After section 63, insert the following sections –

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

63A. (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>8</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.

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<sup>8</sup> Ordres en Conseil Vol. XVIII, p. 315; there are amendments not material to this enactment.

**Restriction on successive challenges.**

**63B.** (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,
- (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 63 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 63 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 12 to impose, vary or rescind any condition in respect of a licence,

(b) a decision to refuse to vary or rescind any such condition,

(c) a decision under section 16 or 64 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 68A,
- (f) a decision to serve notice of objection under section 25 (objection to holders of approved supervised role),
- (g) a decision to serve notice of objection under section 26 (objection to holders of vetted supervised role),
- (h) a decision to serve notice refusing approval for the purposes of section 49B (notification of acquisition of additional voting power), or
- (i) an order or other decision of a class or description specified by regulations of the Committee."

43. For section 64 substitute the following section –

**"Restrictions as to insurance advertisements.**

64. (1) A person shall not issue or cause or permit to be issued an insurance advertisement inviting persons in the Bailiwick to enter into or to offer to enter into a contract of insurance with an insurer which is not a recognised insurer in respect of the contract in question.

(2) For the purposes of this section and of any regulations

or directions made under it -

- (a) an insurance advertisement issued by any person on behalf of another person shall be treated as an insurance advertisement issued by that other person,
- (b) 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 that person on every day on which that person causes or permits it to be displayed or exhibited, and
- (c) the issue of an advertisement containing an invitation -
  - (i) to enter into or offer to enter into a contract of insurance with, or
  - (ii) to become a client or policyholder of or use services provided by,

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.

(3) Without prejudice to the provisions of subsection (1), the Commission may make regulations in respect of the issue, form and content of insurance advertisements.

(4) Regulations under this section may, without prejudice to the generality of subsection (3) or section 85 -

- (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 insurance advertisements,
- (c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission,
- (d) make different provision in relation to different descriptions of insurance business.

(5) If the Commission considers that -

- (a) any insurance 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 regulation under it,

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

(6) 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 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 description,
- (d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner,
- (e) such ancillary, incidental and supplementary

provision as the Commission may determine.

(7) A direction under this section -

- (a) may have immediate effect,
- (b) if given orally, shall be confirmed by the Commission in writing not later than the next business day.

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

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) Subject to subsection (14), a person who -

- (a) contravenes any provision of subsection (1),
- (b) issues or causes or permits to be issued an advertisement the issue of which is prohibited by regulations under this section or who otherwise contravenes any provision of such regulations, or
- (c) issues or causes or permits to be issued 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.

(14) A person ("A") whose business it is to publish or arrange for the publication of advertisements is not guilty of an offence under subsection (13) if A proves (for the avoidance of doubt, on a balance of probabilities) that -

- (a) A received the advertisement for publication in the ordinary course of A's business,
- (b) the matters contained in the advertisement were not (wholly or in part) devised or selected by A or by any person under A's direction or control, and



- (c) A did not know and had no reason to believe that publication of the advertisement would constitute an offence.

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

44. After section 66 replace the cross heading with the following cross heading –

*"Power of Commission to obtain information  
and skilled persons, etc".*

43A. Immediately before section 68 insert the following section -

**"Persons to whom section 68 applies.**

67A. (1) In section 68 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensed insurer,
- (b) an applicant for a licence,
- (c) a former licensed insurer, but subject to the provisions of subsection (2),
- (d) a person carrying on any class or description of insurance 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 insurance business,

(e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of insurance 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 ("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, 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 -

(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 insurance 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 68 apply in relation to a former licensed insurer only for a period of six years immediately following the date on which that former licensed insurer 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 68 are exercised in respect of a former licensed insurer within that six year period, they may continue to be exercised in respect of that former licensed insurer after the expiration of that period.

(3) The provisions of section 68 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 68 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 insurer.

(4) For the avoidance of doubt, if the powers conferred by section 68 are exercised in respect of a licensed insurer 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 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 68 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."

45. For section 68, substitute the following sections –

**"Power to require information and production of documents, etc**

68. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 67A require the relevant person 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 or her 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 to 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) where that person is a licensed insurer, 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 that person's 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 that person pursuant to the requirement are to the best of that person's 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 ("A") in response to a requirement imposed by or under this section -

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

(b) may not be used in evidence against A 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 A, or

(ii) in proceedings for -

(A) an offence under subsection (10) of this section or section 109 of the Enforcement Powers Law,

(B) some other offence where, in giving evidence, A 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 the lien.

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

**Appointment of skilled persons.**

68A. (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 -

- (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 the skilled person 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 insurer,
- (b) an applicant for a licence,
- (c) a former licensed insurer, but subject to the provisions of subsection (5),
- (d) a person carrying on any class or description of insurance 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 insurance business,

- (e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of insurance 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 insurance 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 insurer 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 insurer 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 insurer.

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensed insurer 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 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 the custody or power of the inspected person or person so described and relating to the inspected person; and the skilled person may take copies of or extracts from any documents produced 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 the inspected person or person so described in relation to the inspected person, and

(c) otherwise shall give a skilled person all assistance in connection with the investigation which the inspected person or person so described 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(6)(a) of the Regulation of Fiduciaries Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5) of the Banking Supervision Law, section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law or section 6(5)(a) or 36 of this Law in respect of such an inspected person.

(10) A skilled person shall, if so required, produce evidence of his or her 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 ("A") in response to a requirement imposed by or under this section -

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

(b) may not be used in evidence against A 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 A, 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, A 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 the 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 the skilled person's own fraud, wilful misconduct or gross negligence."

46. Sections 69 to 73 are repealed.

47. For section 74 substitute the following section –

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

74. A person ("A") upon whom a requirement is imposed by or under the provisions of section 68 or 68A or who knows or has reasonable grounds to suspect -

- (a) that such a requirement is likely to be imposed on A, or
- (b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 68 or 68A,

and who tampers with, falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be tampered with, falsified, concealed, destroyed, removed or otherwise disposed of, documents which A 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 A proves (for the avoidance of doubt, on a balance of probabilities) that A had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from the persons carrying out such an inquiry or investigation."

48. After section 74 insert the following section –

**"Retention of documents.**

74A. (1) The following persons or entities –

- (a) a licensed insurer,
- (b) a person carrying on any class or description of insurance 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 insurance 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 insurer, 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."

49. Sections 75 to 77 and the preceding cross heading are repealed.

50. For section 78, substitute the following section and cross heading –

*“Codes and guidance*

**Provision as to codes of practice, guidance, etc.**

78. (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 including, without limitation, persons representative of that part of the Bailiwick's financial services industry which carries on business regulated by this Law,

may (without prejudice to any other power conferred by 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 policyholder 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 persons carrying on business regulated by this Law or 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.

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 sections 33, 38A to 38C, 74A or 82.

(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 that person 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 shall be 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."

51. For section 79(1)(a), substitute the following paragraph –

- "(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,".

52. For section 80 substitute the following section –

**"Cases where disclosure is permitted.**

80. Section 79 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 the Banking Supervision Law or section 84 of this 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 licensee or

former licensee 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 interests 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 (actuarial or otherwise) 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 that person is properly informed as to the matters on which the 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 the professional duties of –
  - (i) an auditor or actuary of a licensee or  
former licensee, or

- (ii) a person appointed to make a report under section 6(5)(a) or 36 of this Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5) of the Banking Supervision Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or
  - (iii) a person appointed as a skilled person pursuant to the provisions of section 68A 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 –
  - (a) information obtained under the provisions of section 68 or 68A of this Law or sections 7 to 13 of the Enforcement Powers Law, or
  - (b) 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 clients or policyholders (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 45 of the Banking Supervision Law,
  - (iv) section 39 of the Regulation of Fiduciaries 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."

53. In section 81 -

- (a) for subsection (1) (and the preceding heading) substitute the following subsection and heading –

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

81. (1) This section applies, to the exclusion of section 79, 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.",

- (b) for subsection (5)(b), substitute the following paragraph –

"(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.", and

- (c) in subsection (6)(b) for "who obtains" substitute "obtains".

54. In section 81A –

- (a) for the words preceding paragraph (a) substitute the following –

"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) –", and

- (b) in paragraph (b), the words "in a country outside the Bailiwick" are repealed.

55. For sections 82 and 83 substitute the following sections –

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

82. (1) No duty to which –

- (a) an auditor or actuary, or
- (b) a person appointed to make a report under section 6(5)(a) or 36 or as a skilled person pursuant to the provisions of section 68A,

is subject is contravened by reason of the auditor or actuary or that person 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 actuary, or

- (b) a person appointed to make a report under section 6(5)(a) or 36 or as a skilled person pursuant to the provisions of section 68A,

to communicate to the Commission matters to which this section applies and which the auditor or actuary 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 insurance business or to be the holder of a supervised role in respect of a licensed insurer, 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 or actuary, this section applies to any matter of which the auditor or actuary becomes aware in the capacity of auditor or actuary and which relates to the business or affairs of –

- (a) a licensed insurer,

- (b) an associated party of the licensed insurer, or
- (c) where the licensed insurer 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 6(5)(a) or 36 or as a skilled person pursuant to the provisions of section 68A, this section applies to any matter of which that person becomes aware in the capacity of 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 the 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 insurers, 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 or actuary of a former licensed insurer as it applies in relation to the auditor or actuary of a licensed insurer.

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

83. (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 insurer or former licensed insurer (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 ("A") to whom a notice is given under subsection (1) that A 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 if A fails to comply with such a direction A is guilty of an offence unless A can show (for the avoidance of doubt, on a balance of probabilities) -

- (A) that A took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by A and by any person under A's control, or

- (B) in the case of an offence under paragraph (b), that A 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 the 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 (“B”) in response to a request made under this section -

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

(b) may not be used in evidence against B 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 B, 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, B 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."

56. Sections 84A to 84C (and the preceding cross heading) are repealed.

57. For sections 85 and 86 substitute the following sections –

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

85. (1) The States may by Ordinance -

(a) make provision for the purpose of carrying this Law into effect and for prescribing any matter which may be prescribed under this Law by Ordinance of the States, and

- (b) without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules, amend any provision of this Law.

(2) 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 (3)(b)) provision amending this Law.

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

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance, regulation or rule and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (3A)),

(ii) provision amending, or applying exceptions, adaptations and modifications to, any provision of this Law or any other enactment,

(iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.



(4) The power conferred by subsection (3)(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.

(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 this Law (other than an Ordinance under section 104), consult the Policy and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(7) The requirement imposed by subsection (6) to consult the Policy and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

(8) 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).

(9) 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 States.**

86. 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."

58. After section 86 insert the following sections –

**"Regulations and rules are statutory instruments."**

86A. 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>h</sup>, the provisions of which shall apply accordingly.

**Publication of regulations, rules, codes and guidance, etc.**

86B. (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

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<sup>h</sup> Recueil d'Ordonnances Tome X, p. 16.

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 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 94, 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.

**Power to adapt rules, codes and guidance, etc, under this Law.**

86C. (1) Subject to the provisions of subsection (2), the Commission may, on the application of a licensee or an applicant for a licence, by notice in writing served on the licensee or applicant adapt the requirements of any rules, codes, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of

any particular insurance business carried on by, the licensee or applicant.

(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 applicant having regard to the benefit which compliance would confer on policyholders and clients, and

(b) the exercise of those powers will not result in any undue risk to policyholders and clients.

(3) The powers conferred by subsection (1) may be exercised unconditionally or subject to conditions.

(4) In this section "**adaptations**" includes exceptions and modifications (and related expressions shall be construed accordingly)."

59. Section 87 is repealed.

60. In section 88 –

(a) for subsection (1) substitute the following subsection –

"(1) A person guilty of an offence under section 27(5), 34(7) or (8), 35(8), 49B(7), 49C(4) or 64(13)(b) shall be liable –

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

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

(b) in subsection (2) –

(i) the words "or body" are repealed,

(ii) in paragraph (b) –

(A) for "three" substitute "6", and,

(B) after "fine not exceeding" insert "twice",

(c) for subsection (3) substitute the following subsection –

"(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)(b) and (2)(b) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by section 13 of the Government of Alderney Law, 2004<sup>i</sup> and section 11 of the Reform (Sark) Law, 2008<sup>j</sup>".

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<sup>i</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

<sup>j</sup> Order in Council No. V of 2008; there are amendments not material to this enactment.

61. For sections 89 and 90 substitute the following sections –

**"Criminal proceedings against unincorporated bodies.**

89. (1) 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 (3), be brought in the name of that body and not in the name of any of its members.

(2) 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.

(3) 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, any of the following persons -

(a) in the case of -

(i) a partnership, any partner or general representative thereof, but subject to the provisions of subparagraph (ii),

(ii) a limited partnership without legal personality, any general partner or general representative thereof,

(b) in the case of any other unincorporated body, any director or general representative 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),

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

**Criminal liability of directors, etc.**

90. (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, any of the following persons -

- (a) in the case of a company, any director, general representative, controller, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner or general representative,
- (c) in the case of a limited liability partnership, any member or general representative,

- (d) in the case of a foundation, any foundation official or general representative, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the 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 that member's functions of management as if that member were a director."

62. For section 91 substitute the following section –

**"Defence of due diligence.**

91. 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 the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused and by any person under the control of the accused."

63. In section 92 –

- (a) after "an offence under" insert "the provisions of", and
- (b) the words ", or any Ordinance, regulation or rule made under

it," are repealed.

64. In section 93 –

(a) for the immediately preceding cross heading substitute  
*"Liability of States, Commission, etc",*

(b) the text is numbered as subsection "(1)",

(c) in subsection (1), as so numbered –

(i) after paragraph (b) insert the following paragraph -

"(bb) by Her Majesty's Sheriff, the Registrar of  
Companies, the Alderney Greffier or the Prévôt  
of Sark, or",

(ii) in the text following paragraph (c), after "by or under"  
insert "the provisions of", and

(iii) the words "or any Ordinance, regulation or rule made  
under it," are repealed, and

(d) after subsection (1) insert the following subsection –

"(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>."

65. For section 94 substitute the following section –

**"Fees regulations and recovery of fees.**

94. (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, 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) the making of a request to the Commission -

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<sup>k</sup> Order in Council No. XIV of 2000; there are amendments not material to this enactment.

- (i) to recognise an organisation as an organisation representative of employers or employees for the purposes of section 5(b),
  - (ii) to modify any requirement of section 30 or 32,
  - (iii) to approve any accounts or any actuarial report in abridged form for the purposes of section 39(2) or 41(1)(d),
  - (iv) to allow the surrender of a licence to be withdrawn under section 15,
  - (v) to consent to the surrender of a licence under section 15,
  - (vi) under any other provision of this Law,
- (d) an application for the consent of the Commission
- 
- (i) under section 4, to the carrying on of insurance business in a country outside the Bailiwick,
  - (ii) under section 45, to a scheme for the

transfer of long term business,

- (iii) under or for the purposes of rules of the Commission under sections 38A to 38C, being an application relating to the capital resources requirements applicable by virtue of those rules (whether as enacted or as modified by the Commission under section 30(2)) including, without limitation, the calculation, maintenance and approval thereof,
- (e) an application, request or notification to the Commission, other than one mentioned in any other paragraph of this subsection, under the provisions of or for the purposes of this Law,
- (f) any other matters in respect of licensees or 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 insurer by or in respect of whom, or in respect of whose licence or business, 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 85(5), regulations under this section may make different provision in respect of -

- (a) different categories, classes or descriptions of licence or licensed insurer or different categories, classes or descriptions of insurance business, or
- (b) the same categories, classes or descriptions of licence or licensed insurer or the same category, class or description of insurance 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.”.

66. After section 94 insert the following section -

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

**94A.** (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 insurance 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 insurer, 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."

67. For section 95 substitute the following section –

**"Service of notices and documents.**

95. (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 ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's 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 95A, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

(g) a licensed insurer, by being given to or served on it, or by being given to or served on its general representative, in accordance with the preceding paragraphs of this subsection;

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 the attention of the person concerned,

(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 that person,

any document other than a summons to be given to or served upon that person 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 or her guardian; and if there is no guardian, the Commission (or, with leave of the appropriate Court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions of 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).".

68. After section 95 insert the following section –

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

95A. (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>1</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>m</sup> and the Electronic Transactions (Sark) Law, 2001<sup>n</sup>."

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<sup>1</sup> Order in Council No. VIII of 2000; there are amendments not material to this enactment.

<sup>m</sup> Order in Council No. XXVI of 2001; there are amendments not material to this enactment.

<sup>n</sup> Order in Council No. X of 2001; there are amendments not material to this enactment.

69. For section 96, substitute the following section –

**"Verification of information.**

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

70. In section 97(1)(a) –

- (a) the words "or body" are repealed, and
- (b) after the words, "or was not a licensee" insert "or former licensee".

71. In section 98 –

- (a) in subsection (1), after "by that entry" insert "(and related expressions shall be construed accordingly)",
- (b) in subsection (2) –

- (i) for "Policy and Performance" (where first appearing) substitute "Policy and Finance",
  - (ii) for the words "the said Policy and Finance Committee or (as the case may be) the said Policy and Performance Committee" substitute "those committees", and
  - (c) subsections (4) and (5) are repealed.
- 72. In section 99 –
  - (a) for paragraph (a) substitute the following –
    - "(a) the Companies (Guernsey) Law, 2008," and
    - (b) in paragraph (c) for "1983" substitute "1989".
- 73. Section 101 is repealed.
- 74. In section 102 –
  - (a) in subsection (2), the words ", statutory instrument or rule of court" are repealed, and
  - (b) in subsection (6), the words ", statutory instrument or rule of court" are repealed.
- 75. After section 102 insert the following –

**"Savings provisions in respect of Insurance Business Ordinance, 2021.**

102A. (1) Any reference in any enactment, however expressed, to any provision of this Law repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021 ("**the 2021 Ordinance**") and re-enacted (with or without modification) by, or by any provision of, the 2021 Ordinance or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of the 2021 Ordinance, as a reference to the provision as re-enacted.

(2) Any Ordinance or subordinate legislation made or other thing done under any provision of this Law repealed or amended by the 2021 Ordinance which could have been made or done under any provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law shall have effect, after the commencement of the 2021 Ordinance, as if made or done under that provision of this Law (as so amended) or the Enforcement Powers Law (as the case may be).

(3) Subsection (2) applies to any subordinate legislation made under a provision of this Law repealed or amended by the 2021 Ordinance notwithstanding that the corresponding provision of this Law (as amended by the 2021 Ordinance) 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.

(4) Anything in the process of being done on the commencement of the 2021 Ordinance under a provision of this Law repealed or amended by the 2021 Ordinance which could be done under any provision

of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law may be continued to be done after the commencement of the 2021 Ordinance under that provision of this Law (as so amended) or the Enforcement Powers Law (as the case may be).

(5) 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 the 2021 Ordinance, and
- (b) for effecting the transition from the provisions of this Law repealed by the 2021 Ordinance which are re-enacted (with or without modification) by, or by any provision of, the 2021 Ordinance or the Enforcement Powers Law to the corresponding provisions of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law (as the case may be).

(6) Regulations under subsection (5) may, without limitation, make such provision in respect of any provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers 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 (as so amended) or the Enforcement Powers Law (as the case may be), whether or not yet in force.

(7) 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."

76. In Schedule 3 –

- (a) in paragraph 2(a)(ii), after "balance sheet" insert "or statement of financial position",
- (b) in paragraph 2(b), after "balance sheet" insert "or statement of financial position", and
- (c) in paragraph 2(c), after "financial year" insert "or other period".

77. For schedule 5 substitute the following –

#### "SCHEDULE 5

Section 98(1)

#### GLOSSARY OF EXPRESSIONS

In this Law, the following expressions have, except where the context otherwise requires, the meanings respectively given below (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,

**"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
  - (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),  
*[EPL]*

**“additional controller holding”** : see section 49B(1)(b),

**"administration manager"** means a person appointed by the Royal

Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"administrative or secretarial services"** includes general accountancy and bookkeeping services, but not –

- (a) the audit of accounts, or
- (b) any services provided by an employee of the insurer concerned under the employee's contract of employment,

**"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 body"** means –

- (a) an Alderney company, or
- (b) an unincorporated body whose principal place of business is in Alderney,

**"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,

**"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,

**"annuities on human life"** does not include retirement annuity trusts, superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons,

**"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>o</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

- (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 68(1),

**"appropriate Court"** : see sections 16(13), 64(12) and 95(6),

**"approved supervised role"** : see section 16A(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 person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,
- (d) any body of which that person is a director,
- (e) where 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 some 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 (e) 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, pursuant to 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 the expression "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 insurers, or
- (b) any other person who performs or has performed the functions of an auditor of a licensed insurer,

**"auditors' management letter"** means a letter issued by the auditor of a licensed insurer to the directors or management of the licensee identifying weaknesses in the accounting and internal control systems and other matters including errors identified during the audit,

**"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 Guernsey body, an Alderney body or a Sark body,

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<sup>P</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

**"Banking Supervision Law"** means the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>q</sup>,

**"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>,

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<sup>q</sup> Order in Council No. XXI of 2020.

<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.



- (iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

**"business plan"** means a plan which includes a financial projection of the insurer's operations and which is in such form and contains such information as may be determined by the Commission,

**"capital base"**, in relation to a licensee, means the capital base determined by the Commission after consultation with the licensee; and any such determination may be varied from time to time,

**"Capital Floor"** shall be determined in accordance with rules of the Commission under sections 38A to 38C, whether generally or in any particular case or class of case,

**"capital redemption contract"** means a contract effected by an insurer (the effecting or carrying out of which does not otherwise constitute insurance business) whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the insured in the future,

**"capital resources"** shall be determined in accordance with rules of the Commission under sections 38A to 38C, whether generally or in any particular case or class of case,

**"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,

**"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) that person's spouse, civil partner or co-habitant,
- (b) that person's children, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters, and
- (c) the spouse, civil partner or co-habitant of any person within paragraph (b),

**"co-habitant"** : 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 licensee or by another person or entity, with responsibility, under the terms of the officer's 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 licensee, person or entity with –
  - (i) the provisions of this 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 licensee, 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 licensee, 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,

**"contract of insurance"** includes any contract the effecting or carrying out of which constitutes the carrying on of insurance business,

**"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,

**"country"** includes any jurisdiction, territory or other place,

**"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,

**"derivative"** means a financial instrument that derives its value from the price or rate of some underlying item; and "underlying items" include, but are not limited to, equities, bonds, commodities, interest rates, exchange rates and stock market and other indices,

**"determined"**, in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

**"directed person"** : see section 16(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,

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

**"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 than in legible form, references to its production, however 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",

**"domestic business"** means insurance business, excluding reinsurance business –

(a) by way of effecting or carrying out a contract of insurance whose principal object is to insure persons who have their ordinary place of residence in the

Bailiwick at the time the contract is effected against any kind of risks except risks in relation to property, or

(b) by way of effecting or carrying out a contract of insurance whose principal object is to insure persons against risks of any kind in relation to –

(i) real property situated in the Bailiwick,

(ii) personal property which at the time the contract is effected is held or based in the Bailiwick or which is deemed in accordance with rules made by the Commission under this paragraph to be so held or based, or

(iii) personal property which is in transit to or from the Bailiwick,

**"electronic address"** : see section 95(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, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

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<sup>u</sup> Order in Council No. XVII of 2020.



**"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 that person, by any means whatsoever –

- (a) becomes entitled to do so as a member of a body, or
- (b) acquires any interest which may entitle that person to be a member of, or otherwise to exercise or control the exercise of voting power of, that body,

**"financial instruments"** include, but are not limited to, futures, options, forward contracts, interest rate and currency swaps, interest rate caps, collars and floors, forward interest rate agreements, commitments to purchase shares or bonds, note issuance facilities and letters of credit, and any similar instrument by whatever name called,

**"Financial Services Commission Law"** means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>v</sup>,

**"financial year"** means the period covered by the licensee's accounts in respect of its business, being the accounts required to be deposited with the Commission by section 37,

**"former licensee"** means a person who –

- (a) is not or is not deemed to be a licensee, but

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<sup>v</sup> Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to this enactment.

- (b) has previously been a licensee,

and also includes any person described in section 102(4) or (5),

**"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,

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<sup>w</sup> Order in Council No. I of 2013; there are amendments not material to this enactment.

**"functions"** of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law,

**"general business"** means insurance business other than long term business,

**"general partner"** means –

- (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),

**"general representative"**, in relation to a licensed insurer, means the insurer's general representative for the purposes of section 29,

**"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,

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<sup>x</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.

**"group entity"** means a body or entity carrying on insurance business or acting as an insurance intermediary and which is not a licensee but which is part of a group containing a licensee,

**"Guernsey body"** means –

- (a) a Guernsey company,
- (b) 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
- (c) an unincorporated body whose principal place of business is in Guernsey,

**"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 Foundations (Guernsey) Law, 2012,

**"Guernsey limited liability partnership"** means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey)

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<sup>y</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

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 8,

**"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
- (c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or,

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<sup>z</sup> Order in Council No. VI of 2014; there are amendments not material to this enactment.

<sup>aa</sup> Ordres en Conseil Vol. XXV, p. 124; there are amendments not material to this enactment.

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 68A(4),

**"insurance"** includes assurance and reinsurance,

**"insurance advertisement"** means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance; and an advertisement containing information which is intended or which might reasonably be presumed to be intended to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them so to do,

**"insurance business"** means the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or through an agent, and includes –

- (a) the effecting or carrying out, by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums,

(b) the effecting or carrying out, by a person (not being a body carrying on a banking business) who carries on business which is insurance business apart from this paragraph, of -

(i) capital redemption contracts,

(ii) contracts to manage the investments of pension funds (other than funds solely for the benefit of that person's own officers or employees and their dependants or, in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company) which are combined with contracts of insurance,

(c) the effecting or carrying out of contracts to pay annuities on human life,

and for the purposes of this Law a person shall not be considered to carry on insurance business solely by reason of the fact that that person -

(A) is a member of the Society of Lloyd's,

(B) effects or carries out a contract of reinsurance with a licensed insurer in the Bailiwick (unless

that person's principal place of business is in the Bailiwick), or

- (C) invests in shares or in some other way participates in the results of an insurer:

Provided always that the Commission may by regulation amend this definition of the expression "insurance business",

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

**"insurer"** means a company or other person carrying on, or holding itself out as carrying on, insurance business,

**"insurers' code of conduct"** means a code of conduct for licensed insurers issued by the Commission from time to time for the purposes of this Law,

**"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>,

**"licence"** means a licence granted under section 7,

**"licensed banking institution"** means an institution which is a licensed institution within the meaning of the Banking Supervision Law (that is, an institution which holds or which is deemed to hold a banking licence under that Law),

**"licensed fiduciary"** means a person who is a licensed fiduciary within

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<sup>bb</sup> Order in Council No. III of 1994; there are amendments not material to this enactment.

<sup>cc</sup> Ordres en Conseil Vol. XLIII, p. 617; there are amendments not material to this enactment.

the meaning of the Regulation of Fiduciaries Law (that is, a person who holds or who is deemed to hold a fiduciary licence under that Law),

**"licensed insurance intermediary"** means a person for the time being licensed as an insurance intermediary under the Insurance Managers and Intermediaries Law,

**"licensed insurance manager"** means a person for the time being licensed as an insurance manager under the Insurance Managers and Intermediaries Law,

**"licensed insurer"** means an insurer for the time being licensed under section 7 and includes an insurer carrying on business in such circumstances as not to require licensing by virtue of section 5,

**"licensee"** means a licensed insurer,

**"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 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
  - (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

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<sup>dd</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.

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,

**"long term business"** means, subject to section 2(3) and (4), insurance business of any of the descriptions set out in Schedule 1,

**"long term policyholder"** means a policyholder in respect of a policy the effecting of which by the insurer constituted the carrying on of long term business,

**"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 Liability Partnerships (Guernsey) Law, 2013,

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<sup>ee</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

**"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 7,

**"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 16A(3),

**"officer"**, in relation to a company, includes a director, liquidator, manager or 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<sup>ff</sup> and –

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<sup>ff</sup> Ordres en Conseil Vol. XXIII, p. 573; there are amendments not material to this enactment.

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his or her 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 or her jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004<sup>gg</sup>,
- (c) in relation to Sark –
  - (i) the Constable, an Assistant Constable and the Vingtenier, and
  - (ii) within the limits of his or her jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

**"ordinary members of the Commission"** means the members of the Commission other than the Chairman,

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<sup>gg</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

**"other supervised manager"** : see section 16A(2)(e),

**"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,

**"Personal Questionnaire"** means a questionnaire, in a form to be determined from time to time by the Commission –

- (a) which is lodged with the Commission and kept up to date, and
- (b) which does not omit information which –

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<sup>hh</sup> Ordres en Conseil Vol. XXXVI, p. 179; there are amendments not material to this enactment.

- (i) the insurer, or
- (ii) the person in respect of whom the questionnaire is required to be lodged,

knows or has reasonable grounds to suspect is, or might reasonably be thought to be, material to the assessment (pursuant to the minimum criteria for licensing) of the latter's suitability to be a person of a description set out in section 11(3),

**"policy" –**

- (a) in relation to long term business, includes an instrument evidencing a contract to pay an annuity upon human life,
- (b) in relation to insurance business of any other description, includes a policy under which there is for the time being an existing liability already accrued or under which a liability may accrue, and
- (c) in relation to capital redemption contracts, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the insurer,

**"Policy and Finance Committee of the Chief Pleas of Sark" : see subsection 98(2),**



**"Policy and Finance Committee of the States of Alderney"** : see section 98(2),

**"policyholder"** means the person who for the time being is the legal holder of the policy securing the contract with the insurer or, in relation to capital redemption business, the person who for the time being is the legal holder of the policy, bond, certificate, receipt or other instrument evidencing the contract with the insurer, and –

- (a) in relation to long term business involving the granting of annuities upon human life, includes an annuitant, and
- (b) in relation to insurance business of any kind other than such as is mentioned in the foregoing paragraph or capital redemption contracts, includes a person to whom, under a policy, a sum is due or a periodic payment is payable,

**"pool"** means an arrangement which is created when a number of insurers agree that all insurances of a particular character shall be shared amongst them in specified proportions,

**"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, policyholders and clients and potential policyholders and clients (whether of any 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, policyholders or clients 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

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<sup>ii</sup> Order in Council No. XVIII of 2020.

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,

**"Recognised Accounting Standards"** means accounting standards (which expression shall include any insurance industry recommended practice, by whatever name or description issued) which are for the time being approved by the Commission,

**"recognised insurer"** means the following –

- (a) any person who is licensed as an insurer under this Law in respect of the description of insurance business concerned,
- (b) any person who is entitled to carry on the description of insurance business concerned in or from within the Bailiwick without being licensed as an insurer under this Law by virtue of section 5,
- (c) any insurer for the time being included (specifically or by description) in a list of recognised insurers maintained and published by the Commission,

**"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 49C(1),

**"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>,

**"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 Financial Services Commission Law,
- (c) the Banking Supervision Law,
- (d) the Regulation of Fiduciaries Law,

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<sup>jj</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

<sup>kk</sup> Order in Council No. XIX of 2020.

- (e) the Insurance Managers and Intermediaries 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 regulations of the Committee,

**"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 document"** : see section 38B(p),

**"relevant electronic address"** : see section 95(1)(iii),

**"relevant person"** : see section 67A(1),

**"Relevant Professional Standards"** for the purposes of section 41 means those professional standards from time to time approved by the Commission for the purposes of that section,

**"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,

**"Sark body"** means any body, other than a Guernsey company or an Alderney company or a legal person mentioned in paragraph (b) of the definition of a Guernsey body, whose principal place of business is in Sark,

**"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,

"**shareholders' funds**" means the value of the excess of an insurer's assets over its liabilities; and for the purposes of this definition the expression "**liabilities**" excludes share capital, retained reserves and loans from shareholders where they are subordinated, in writing, to the prior claims of all other creditors,

"**significant shareholder**", in relation to a body (other than a licensed banking institution incorporated in a jurisdiction outside the Bailiwick), 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 68A(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 8, and **"subsidiary"** has the same meaning,

**"supervised role"** means an approved supervised role, a notified supervised role or a vetted supervised role,

**"syndicate"** means a group of underwriters on whose behalf insurances are accepted, each underwriter taking a proportion of the insurances for itself

without assuming liability for the insurances taken by the other members of the group,

**"third party insurance enactments"** means –

- (a) the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Laws, 1936 to 1989,
- (b) the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950,
- (c) the Steam Boilers (Insurance) Ordinance, 1952,
- (d) the Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969,
- (e) the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972,
- (f) the Tractors (Sark) Law, 1974,
- (g) the Employers' Liability (Compulsory Insurance) (Guernsey) Law, 1993,
- (h) the Employers' Liability (Compulsory Insurance) (Alderney) Law, 1994,
- (i) the Firearms (Guernsey) Law, 1998,

- (j) the Firearms (Sark) Law, 2001,
- (k) any other enactment prescribed by regulations of the States Committee for Economic Development; and regulations made under this paragraph may amend or repeal any of the preceding paragraphs of this definition,

**"transmitted"** : see section 95(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 16A(2).".

78. In schedule 7 –

- (a) in paragraph 1(1)(b) for “his activities” substitute “the activities of the applicant or licensee”,
- (b) in paragraph 1(2), the word “his” is repealed,
- (c) for paragraph 1(2)(a)(ii), substitute –
  - “(ii) any rules, codes, guidance, principles, policies and

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<sup>II</sup> Ordres en Conseil Vol. XXXI, p. 278 ; there are amendments not material to this enactment.

instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensee, and”,

(d) in paragraph 3(1), for "a director, controller, partner, manager or general representative" substitute "the holder of a supervised role in respect",

(e) for paragraph 3(2) substitute –

“(2) In determining whether a person (“A”) is a fit and proper person to hold a licence or a particular position, regard shall be had to –

(a) A’s probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position,

(b) the diligence with which A 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 A holding a licence or that position,

(d) A’s educational and professional

qualifications, A's membership of professional or other relevant bodies and any evidence of A's continuing professional education or development,

(e) A's knowledge and understanding of the legal and professional obligations to be assumed or undertaken,

(f) A's policies, procedures and controls for the vetting of clients or policyholders and A's 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) A's 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) A's 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) A's 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) A's policies, procedures and controls to comply with any rules, codes, guidance, principles, policies and instructions referenced in paragraph 1(2).",

- (f) in paragraph 3(3), for "evidence that he has" substitute "evidence that that person has",

- (g) for paragraph 3(3)(b) substitute -

"(b) contravened any of the provisions of –

- (i) this Law,

- (ii) the regulatory Laws,

- (iii) the repealed regulatory legislation (within the meaning of the Enforcement Powers Law),

- (iv) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, rules, codes, guidance, principles, policies and instructions issued by the Commission in relation thereto), or

- (v) 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),

(h) in paragraph 3(3)(c)(ii) for “his” wherever appearing substitute “that person’s”,

(i) for paragraph 3(3)(d) substitute –

“(d) engaged in or been associated with any other business practices or other conduct or behaviour in such a way as to cast doubt on that person’s competence and soundness of judgement.”,

(j) for paragraph 3(4)(c), substitute –

"(c) "enactment" includes any primary, secondary or tertiary legislation of any jurisdiction in the British Islands or elsewhere.",

(k) in paragraph 5 –

(i) in the heading for "Position" substitute "Composition",  
and

(ii) subparagraph (1)(b), is repealed,

(l) for paragraph 6 substitute the following paragraph –

**"Business to be conducted in prudent manner."**

6. (1) The applicant or licensee conducts or, in the case of a person who is not yet carrying on business regulated by this Law, will conduct business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), an applicant or licensee ("A") shall not be regarded as conducting business in a prudent manner unless -

(a) A 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) A maintains or, as the case may be, will maintain adequate liquidity, having regard to -

(i) the relationship between A's liquid assets and A's actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and A's assets will mature,

(iii) the nature and scale of A's operations,

(iv) the risks inherent in those operations and (where A is a company) in the operations of any other company in the same group so far as capable of affecting A, and

(v) any other factors appearing to the Commission to be relevant,

(c) A makes or, as the case may be, will make adequate provision for –

- (i) depreciation or diminution in the value of A's assets (including provision for bad or doubtful debts),
  - (ii) liabilities which will or may fall to be discharged by A, and
  - (iii) losses which A will or may incur,
- (d) A maintains or, as the case may be, will maintain -
- (i) adequate accounting and other records of A's business, and
  - (ii) adequate systems of control of A's business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), in determining whether an applicant or licensee is to be regarded as conducting business in a prudent manner, the Commission shall also have regard to the following -

- (a) whether the applicant or licensee 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 licensee for business undertaken or

contemplated and the provision made by the applicant or licensee for the proper maintenance and development of such systems,

(c) the complaints history of the applicant or licensee, and

(d) where the applicant or licensee is a company which 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 A's operations, and

(ii) an amount and nature sufficient to safeguard the interests of A's clients and policyholders and potential clients and policyholders, having regard to -

(A) the nature and scale of A's operations,

(B) the risks inherent in those operations and (where A is a

company) in the operations of any other company in the same group so far as capable of affecting A, 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 licensee, the Commission may, to such extent as it thinks appropriate, take into account -

(i) the assets of the applicant or licensee, and

(ii) the facilities which are available to the applicant or licensee 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 licensee to be prudently managed, and
  - (B) the applicant or licensee to comply with the duties imposed by or under the provisions of this Law or any enactment listed in paragraph 3(2)(f), and
- (ii) where the applicant or licensee is a company, 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 company's directors.".
- (m) in paragraph 6A, for "a director, controller, partner, manager or general representative" substitute "the holder of a supervised role in respect", and
- (n) in paragraph 7, the words ", in accordance with section 86," are repealed.

**79.** In schedule 8 –

- (a) in paragraph 3(b), for "paragraphs" substitute "the provisions of items",

(b) in paragraph 3(d), for "paragraph" substitute "item", and

(c) for paragraph 5, substitute the following paragraph –

"5. The Committee may make regulations amending the provisions of this Schedule."

**Amendment of Enforcement Powers Law.**

80. In Schedule 1 to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, in paragraph (e) of the definition of the "repealed regulatory legislation", for "the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2020" substitute "the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021".

**Citation.**

81. This Ordinance may be cited as the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021.

**Commencement.**

82. This Ordinance shall come into force on the 1<sup>st</sup> November, 2021.