



# BILLET D'ÉTAT

TUESDAY, 18<sup>th</sup> AUGUST, 2020

XVII  
2020

## *THE BUSINESS OF THE MEETING*

1. Policy & Resources Committee - States of Alderney - Excise Duty on Motor Fuel and Document Duty, P.2020/133
2. Policy & Resources Committee - The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, P.2020/135
3. Policy & Resources Committee - The Protection of Investors (Bailiwick of Guernsey) Law, 2020, P.2020/136
4. Policy & Resources Committee - The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, P.2020/137
5. Policy & Resources Committee - The Banking Supervision (Bailiwick of Guernsey) Law, 2020, P.2020/138

# BILLET D'ÉTAT

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## TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

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I hereby give notice, pursuant to the provisions of Rule 2(4) of the Rules of Procedure of the States of Deliberation and their Committees, that at the Meeting of the States of Deliberation to be held at **THE ROYAL COURT HOUSE**, on **TUESDAY**, the **18<sup>th</sup> August, 2020** the items listed in this Billet d'État are submitted for debate.

R. J. McMAHON  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

27<sup>th</sup> July, 2020

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

**POLICY & RESOURCES COMMITTEE**

**STATES OF ALDERNEY – EXCISE DUTY ON MOTOR FUEL AND DOCUMENT DUTY**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'States of Alderney – Excise Duty on Motor Fuel and Document Duty' dated 30 June, 2020, they are of the opinion:-

1. To approve the proposals set out in that policy letter to enable the States of Alderney to set the rates of excise duty on Motor Fuel imports into Alderney and the rates of document duty on conveyances and other relevant documents in respect of Alderney real property, which was included in the Review of the Financial Relationship agreed in 2016, with effect from the 1<sup>st</sup> January, 2021.
2. To approve The Customs and Excise (General Provisions) (Amendment) Ordinance, 2020.
3. To approve The Alderney (Application of Legislation) (Document Duty) (Amendment) Ordinance, 2020.

The above Propositions have 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.

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

**POLICY & RESOURCES COMMITTEE**

**STATES OF ALDERNEY – EXCISE DUTY ON MOTOR FUEL AND DOCUMENT DUTY**

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

30 June, 2020

Dear Sir

**1. Executive Summary**

- 1.1 This policy letter is recommending approval of the necessary Guernsey Ordinances to enable the States of Alderney to set the rates of excise duty on Motor Fuel imports into Alderney and the rates of document duty on conveyances and other relevant documents in respect of Alderney real property. This is in accordance with the direction set out in the Review of the Financial Relationship between Guernsey and Alderney which was agreed in 2016.

**2. Background**

- 2.1. In February 2016 (Billet d'État III, 2016), the States considered a policy letter from the Policy Council titled *"The Review of the Financial Relationship between Guernsey and Alderney"* and, agreed in principle, that the financial arrangements be modified such that:

- Guernsey retains responsibility to fund all Transferred Services, and the Social Security Funds, through the pooled income sources of Income Tax and Social Security Contributions;
- The States of Alderney is responsible for funding all other public services in Alderney (including the harbour, drainage (foul and surface water), roads, coastal defence, water and electricity), from all other levies, rates, taxes,



permit fees, rents, duties and other income collected from sources based in Alderney (such as tax on real property, occupiers' rates, import duties and excise duties, fees in lieu of Congé, document duty, numismatic and philatelic profits, and company registration fees.

2.2. The 2017 Budget Report (Billet d'État XXVI, 2016) included:

*"As the first stage in introducing the modified financial arrangements, the Policy & Resources Committee is intending, subject to the formal approval of the States of Alderney, to propose in the 2018 Budget Report that, with effect from 2018:*

- *The Tax on Real Property (TRP) rates in respect of Alderney buildings will be set at £zero. The 2017 budget for this income is £800,000;*
- *The excise duty on Motor Fuel imports into Alderney will be set at £zero. The 2017 budget for this income is £350,000;*
- *The document duty on conveyances of Alderney property which is paid to General Revenue is paid to the States of Alderney. The 2017 budget for this income is £350,000;*
- *A commensurate reduction is made to the recommended 2018 Cash Limit for the States of Alderney. The estimated reduction is £1.5million which would reduce the Cash Limit to £330,000 per annum.*

2.3. In February 2019, (Billet d'État III, 2019), the States agreed a request from The States of Alderney Policy and Finance Committee to prepare the necessary Guernsey legislation for the implementation of a new single Property Tax in Alderney. This legislation comprised an enabling provisions Law, the *"Alderney Property Tax (Enabling Provisions) Law, 2020"*, now approved by the States of Deliberation and now awaiting approval by the States of Alderney at their July meeting, which will empower the States of Alderney to enact the necessary underlying Ordinances implementing a single Alderney Property Tax, replacing the tax on real property and occupiers' rate regimes currently in force in that island. The necessary draft Ordinance is currently with the States of Alderney for review and it is hoped that both these items of legislation will be in force for 2021.

2.4. The States of Alderney Policy & Finance Committee has now requested the Policy & Resources Committee to submit a policy letter recommending approval of the necessary Ordinances to enable the States of Alderney to set the rates of excise duty on Motor Fuel imports into Alderney and the rates of document duty on conveyances and other relevant documents in respect of Alderney real property.

### 3. Proposals

- 3.1 In order for the States of Alderney to set the rates of excise duty on Motor Fuel imports into Alderney, it is proposed that The Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 is amended such that:
- The States of Alderney can specify its own fuel duty rate as part of the Fourth Schedule to the above; and
  - The revenues attributable to Alderney are credited at the direction of the Policy & Resources Committee to the States of Alderney Accounts instead of General Revenue.
- 3.2 In order for the States of Alderney to set the rates of document duty on conveyances and other relevant documents in respect of Alderney real property, it is proposed that The Document Duty (Guernsey) Law, 1973 as it has effect in Alderney by virtue of the Alderney (Application of Legislation) Law, 1948 and the Document Duty Ordinance, 2003 is amended to allow:
- The States of Alderney to prescribe documents and the rate of duties; and
  - The revenues attributable to Alderney to be paid to the Greffier of the Court of Alderney and credited to the States of Alderney Accounts instead of General Revenue.
- 3.3 In a similar way to the charging of TRP on Alderney property, the ability would remain for the States of Guernsey to set the rates of excise duty on Motor Fuel and the rates of Document Duty but the intention is that they would be levied at nil in future. These income raising responsibilities and control over revenues will pass to the States of Alderney together with a commensurate reduction in the States of Alderney Cash Limit (which from 2020 is treated as a grant).
- 3.4 This proposal will provide the States of Alderney with greater freedom and flexibility to set tax and duty rates at such levels as they determine will best raise the funds necessary to provide their public services. If there is a decrease in the level of revenues received by the States of Alderney, for example as a result of a reduction in rates, the States of Alderney would either have to raise additional income from another source or reduce expenditure.
- 3.5 The Bailiff has granted permission<sup>1</sup> for the policy letter and draft legislation to be considered by the States at the same meeting.

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<sup>1</sup> In accordance with paragraph 5.2.1 of Directive No. 1 of 2016 (entitled The Submission of Propositions to the States) issued by HM Greffier on 20 May 2016

#### **4. Compliance with Rule 4**

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 4.3 In accordance with Rule 4(3), the Propositions are not requesting the States to approve funding.
- 4.4 In accordance with Rule 4(4), it is confirmed that the propositions above have the unanimous support of the Committee.
- 4.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop policies relating to fiscal policy and the financial resources of the States, and relations with the other islands of the Bailiwick.

Yours faithfully

G A St Pier  
President

L S Trott  
Vice-President

A H Brouard  
J P Le Tocq  
T J Stephens

# **The Customs and Excise (General Provisions)**

## **(Amendment) Ordinance, 2020**

**THE STATES**, in pursuance of their Resolution of the \*\*\*\*, 2020<sup>2</sup>, and in exercise of the powers conferred on them by sections 23J and 23K of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>3</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Customs and Excise Law.**

1. The Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 is further amended as follows.

2. In section 6 after “for the account of the General Revenue” insert “except to the extent that the Policy and Resources Committee directs payment elsewhere (for example, to the account of States of Alderney)”.

3. In section 7(6) after “for the account of the General Revenue” insert “except to the extent that the Policy and Resources Committee directs forfeiture otherwise (for example, for the account of the States of Alderney)”.

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<sup>2</sup> Article \*\* of Billet d'État No. \*\* of 2020.

<sup>3</sup> Ordres en Conseil Vol. XXIII, p. 573; sections 23J and 23K were inserted by No. X of 2004; there are other amendments not material to this Ordinance.

4. In section 16(2) after “for the account of the General Revenue” insert “except to the extent that the Policy and Resources Committee directs payment elsewhere (for example, for the account of the States of Alderney)”.

5. In section 17(2) after “to the account of the General Revenue” insert “except to the extent that the Policy and Resources Committee directs payment elsewhere (for example, to the account of the States of Alderney)”.

6. After section 23B(3) insert the following subsection -

“(4) Without prejudice to the powers conferred on the Policy and Resources Committee by subsections (1) and (2) and on the States of Deliberation by subsection (3), the States of Alderney may, subject to the provisions of any order or Ordinance made under those subsections and in force in Alderney, by Ordinance amend the Fourth Schedule as it has effect in Alderney by adding any class or description of goods to it or by removing or varying any class or description of goods specified in it.”.

7. After section 23C(3) insert the following subsection -

“(4) Without prejudice to the powers conferred on the Policy and Resources Committee by subsections (1) and (2) and on the States of Deliberation by subsection (3), the States of Alderney may, subject to the provisions of any order or Ordinance made under those subsections and in force

in Alderney, by Ordinance amend the Fourth Schedule as it has effect in Alderney by specifying or varying the rates of excise duty chargeable on any class or description of goods specified therein.”.

8. In section 63 after “to the account of the General Revenue” insert “except to the extent that the Policy and Resources Committee directs them to be credited elsewhere (for example, to the account of the States of Alderney)”.

**Citation and commencement.**

9. This Ordinance may be cited as the Customs and Excise (General Provisions) (Amendment) Ordinance, 2020.

**Commencement.**

10. This Ordinance shall come into force on the [1<sup>st</sup> September, 2020].

# **The Alderney (Application of Legislation)**

## **(Document Duty) (Amendment)**

### **Ordinance, 2020**

THE STATES, in pursuance of their Resolution of the \*\*\*, 2020<sup>4</sup>, and in exercise of the powers conferred on them by section 2 of the Alderney (Application of Legislation) Law, 1948<sup>5</sup> and all other powers enabling them in that behalf, hereby order:-

**Document Duty Law of 1973 and Ordinance of 2003 to continue to have effect in Alderney.**

1. The Document Duty (Guernsey) Law, 1973<sup>6</sup> and the Document Duty Ordinance, 2003<sup>7</sup> shall continue to have effect in the Island of Alderney subject to the exceptions, adaptations and modifications set out in sections 2 and 3.

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<sup>4</sup> Article \*\* of Billet d'État No. \*\* of 2020.

<sup>5</sup> Ordres en Conseil Vol. XIII, p. 448; there are amendments not material to this Law.

<sup>6</sup> Ordres en Conseil Vol. XXIV, p. 74; there are amendments not material to this Law.

<sup>7</sup> Ordinance No. VI of 2003; there are amendments not material to this Law.

**Modification of Document Duty Law of 1973.**

2. As respects the application of the Document Duty (Guernsey) Law, 1973 in Alderney -

- (a) in sections 1(1), 5 and 6(1) and (2) for “the States” wherever appearing substitute “the States of Alderney”,
- (b) in sections 1 and 5 for "Her Majesty's Greffier" substitute “the Greffier (within the meaning of the Government of Alderney Law, 2004)”,
- (c) in section 7(1) –
  - (i) the reference to "the Cadastre" is to the valuation carried out and maintained under the provisions of section 4 of the Alderney (Application of Legislation) Law, 1948,
  - (ii) in the definition of “this Island” for “Guernsey” substitute “Alderney”,
  - (iii) in the definition of “prescribed” for “the States” substitute “the States of Alderney”,



- (iv) after the definition of “rate” insert the following definition

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““the Records of this Island” include the Register of Companies within the meaning of the Companies (Alderney) Law, 1994 and the Alderney Land Register kept under the Alderney Land and Property, etc. Law, 1949,” and

- (v) the definition of “the States” is repealed.

**Modification of Ordinance of 2003.**

3. As respects the application of the Document Duty Ordinance, 2003 in Alderney, section 7 does not apply.

**Saving for existing Ordinances.**

4. Subject to sections 1, 2 and 3 and the exceptions, adaptations and modifications effected thereby, any Ordinance enacted by the States of Deliberation under sections 1(1) and 6(1) and (2) of the Document Duty (Guernsey) Law, 1973 and in force immediately before the commencement of this Ordinance shall continue to have effect in the Island of Alderney -

- (a) as it had effect therein immediately before the commencement of this Ordinance in all respects as if it were an Ordinance of the States of Alderney,
- (b) until repealed or amended by Ordinance of the States of Alderney made under those sections as they have effect in the Island of Alderney.

**Citation.**

5. This Ordinance may be cited as the Alderney (Application of Legislation) (Document Duty) (Amendment) Ordinance, 2020.

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

**PROJET DE LOI**

Entitled

**THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES AND COMPANY  
DIRECTORS, ETC (BAILIWICK OF GUERNSEY) LAW, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the Projet de Loi entitled "The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020", as amended in accordance with the Resolution of the States made on the 15<sup>th</sup> July, 2020, and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

**EXPLANATORY MEMORANDUM**

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

*Background*

The Law is part of a major legislative project by which the five principal Laws dealing with the regulation of financial services business in the Bailiwick of Guernsey, namely the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, the Insurance Business (Bailiwick of Guernsey) Law, 2002, and the Insurance Managers and

Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (all of which have been amended on numerous occasions), will be replaced by new Laws, or, in the case of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, amended by Ordinance under the Ordinance-making powers set out in those two Laws.

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

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

At their meeting of 15<sup>th</sup> July, 2020, the States resolved that the version of the Projet submitted for approval at that meeting should be amended to make the text of the Projet gender neutral. In accordance with that Resolution the text has been amended and is re-presented accordingly.

# PROJET DE LOI

ENTITLED

## **The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020**

### ARRANGEMENT OF SECTIONS

#### PART I REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES & COMPANY DIRECTORS, ETC

##### *Prohibition of unlicensed business*

1. Prohibition of unlicensed business.
2. Regulated activities.
3. Exempted activities.

##### *Licensing*

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

##### *Principles of conduct*

10. Principles of conduct for licensed fiduciaries.

##### *Directions*

11. Power to issue directions.

*Supervised roles*

12. Supervised roles.

*Information as to fiduciaries*

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

*Notification of holding of approved and vetted supervised roles, etc  
and acquisition of voting power*

14. Notification of and objection to holders of approved supervised roles.  
15. Notification of and objection to holders of vetted supervised roles.  
16. Notification of change of holder of supervised role.  
17. Notification of acquisition of significant shareholding.

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

*Representations, notice of decisions  
and appeals*

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

*Advertising for business, etc*

24. Control of advertising.

*Powers to obtain information  
and skilled persons, etc*

25. Persons to whom section 26 applies.  
26. Power to require information and production of documents, etc.  
27. Appointment of skilled persons.  
28. Falsification, etc, of documents during investigation.  
29. Retention of documents.

#### *Accounts and auditors*

- 30. Rules as to accounts, etc.
- 31. Notification in respect of auditors.
- 32. Communications by auditors, etc, to Commission.
- 33. Power to request meetings with auditors, actuaries, etc.

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

- 34. Rules of the Commission.
- 35. Particular matters that may be covered by rules.
- 36. Rules as to annual return.
- 37. Codes of practice and guidance.

### PART III DISCLOSURE OF INFORMATION

- 38. Restrictions on disclosure of information.
- 39. Cases where disclosure is permitted.
- 40. Information supplied to Commission by relevant supervisory authority.
- 41. Royal Court to take Commission's undertakings into account.

### PART IV OFFENCES AND PENALTIES

- 42. Penalties.
- 43. Criminal liability of directors, etc.
- 44. Criminal proceedings against unincorporated bodies.
- 45. Defence of due diligence.
- 46. Jurisdiction.

### PART V GENERAL PROVISIONS

#### *Miscellaneous*

- 47. Commission to have regard to guidance, etc, under FSC Law and other matters.
- 48. Service of notices and documents.
- 49. Documents to be submitted in electronic form and by electronic means.
- 50. Verification of information.
- 51. Evidence.

*Liability of States, Commission, etc*

- 52. Exclusion of liability.

*Ordinances, regulations and rules, etc*

- 53. Ordinances, regulations, rules, codes and guidance, etc - general.
- 54. Regulations: consultation with Committees and Commission and laying before the States.
- 55. Publication of regulations, rules, codes and guidance, etc.
- 56. Making and effect of contravention of rules.
- 57. Regulations and rules are statutory instruments.
- 58. Power to adapt rules, codes and guidance, etc, under this Law.

*Interpretation, repeals, commencement, etc*

- 59. Interpretation.
- 60. Savings and transitional provisions.
- 61. Conversion of primary fiduciary licence into secondary fiduciary licence.
- 62. Repeals.
- 63. Citation.
- 64. Commencement.

SCHEDULE 1: Minimum criteria for licensing.

SCHEDULE 2: Meaning of "holding company" and "subsidiary company".



# PROJET DE LOI

ENTITLED

## **The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020**

THE STATES, in pursuance of their Resolutions of the 30<sup>th</sup> October, 2015<sup>a</sup> and the 27<sup>th</sup> November, 2015<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES & COMPANY DIRECTORS, ETC

##### *Prohibition of unlicensed business*

##### **Prohibition of unlicensed business.**

1. (1) Subject to the provisions of this Law, persons other than Bailiwick bodies shall not carry on, offer to carry on, or hold themselves out as being willing to carry on, by way of business, in or from within the Bailiwick, any of the

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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.

activities described in section 2 ("**regulated activities**") except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 6 (a "**fiduciary licence**").

(2) Subject to the provisions of this Law, a Bailiwick body shall not carry on, offer to carry on, or hold itself out as being willing to carry on, by way of business, in or from within any place whatsoever, any regulated activities except under the authority of and in accordance with the conditions of a fiduciary licence.

(3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.

(4) The fact that a regulated activity is carried on in contravention of this section does not of itself affect any civil liability arising in respect of the carrying on of the activity.

**Regulated activities.**

2. (1) Subject to the provisions of section 3, regulated activities are the following –

(a) the formation, management or administration of trusts, and the provision of advice in relation to the formation, management or administration of trusts, including (without limitation) –

(i) acting as corporate or individual trustee, enforcer or protector for trusts,

(ii) the provision to trusts of corporate or individual

trustees, enforcers or protectors,

(b) company or corporate administration including (without limitation) –

(i) the formation, management or administration of companies, partnerships or other unincorporated bodies, and the provision of advice in relation to the formation, management or administration of companies, partnerships or other unincorporated bodies, whether incorporated or established in or under the laws of the Bailiwick or elsewhere,

(ii) the provision to any such companies, partnerships or other unincorporated bodies of –

(A) corporate or individual directors, partners or, in the case of a limited liability partnership, members,

(B) individuals or companies to act as company or corporate secretary or in any other capacity as officer of a company, partnership or other unincorporated body other than a director or other role referred to in item (A),

(C) nominee services, including (without

limitation) acting as or providing nominee shareholders,

(D) registered offices or accommodation addresses (the expression "**address**" in this subparagraph including any postal, telecommunication or electronic address),

(iii) acting as director of any company or unincorporated body, or as partner of any partnership, or as member of any limited liability partnership, whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere,

(c) the provision of executorship services including (without limitation) acting as, or accepting an appointment made by will as, an executor of a will or administrator of an estate,

(d) the formation, management or administration of foundations, and the provision of advice in relation to the formation, management or administration of foundations, including (without limitation) –

(i) acting as corporate or individual foundation official,

(ii) the provision to foundations of corporate or individual foundation officials,

(e) the formation, management or administration of pension schemes or gratuity schemes, and the provision of advice in relation to the formation, management or administration of pension schemes or gratuity schemes.

(2) The States of Guernsey Policy and Resources Committee ("**the Committee**") may by regulation amend subsection (1) by adding any activity to it or removing any activity from it.

(3) Without prejudice to the generality of subsection (2), regulations adding any activity to subsection (1) may provide for the taking into account, as the activities of a person, of the activities of any person connected with that person in such manner as may be specified in the regulations.

**Exempted activities.**

3. (1) The following activities are exempted from the operation of section 1 and accordingly are not subject to licensing under the provisions of this Law

–

(a) acting as trustee or custodian of a collective investment scheme authorised or registered by the Commission under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>c</sup> (the "**Protection of Investors**")

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<sup>c</sup> Approved by the States of Deliberation on the \*\* August, 2020.

**Law"),**

- (b) acting as a director of a company which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the company by the director (other than acting as director),
- (c) acting as a director of a company which is quoted on a stock exchange recognised by the Commission for the purposes of this paragraph,
- (d) acting as a director of a company where more than half in nominal value of the equity share capital of that company is held by –
  - (i) the director, as beneficial owner,
  - (ii) any close relative of the director, as beneficial owner, or
  - (iii) the trustees of a trust of which a person mentioned in subparagraph (i) or (ii) is a beneficiary,
- (e) acting as a director of a supervised body,
- (f) acting as a director of a company which is a subsidiary of, or wholly beneficially owned by, a company or body

described in paragraph (b), (c), (d), (e) or (l),

- (g) acting, where the person so acting is an individual, as a director of not more than six companies, being directorships which are not the subject of an exemption contained in any other paragraph of this subsection,
- (h) acting as bookkeeper or company secretary of a body which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the body by the person concerned (other than acting as bookkeeper or company secretary),
- (i) acting as a partner of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the partner (other than acting as partner),
- (j) acting as a foundation official of a foundation which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the foundation by the foundation official (other than acting as foundation official),
- (k) acting as a member of a limited liability partnership which has an established place of business within the

Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the limited liability partnership by the member (other than acting as member),

- (l) acting as a partner of a partnership or member of a limited liability partnership –
  - (i) which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors Law or which is exempt from licensing under section 44 of that Law, or
  - (ii) which holds an authorisation or registration under section 8 of that Law,
- (m) acting as a limited partner in a limited partnership,
- (n) acting as a member in a limited liability partnership, but only where the members' agreement provides, as referenced in section 14(3)(b) of the Limited Liability Partnerships (Guernsey) Law, 2014, that the member may not take part in the conduct or management of the partnership,
- (o) acting as bookkeeper of a partnership which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the partnership by the



person concerned (other than acting as bookkeeper),

(p) the acceptance of money on terms under which the money –

(i) is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable in the event of the property or services not in fact being sold, hired or otherwise provided,

(ii) is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract, or

(iii) without prejudice to subparagraph (ii), is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise,

(q) acting as guardian of a minor or person under legal disability where the appointment is made by, and where the performance of the functions of guardian is subject to the supervision of, the Royal Court, the Court of Alderney or the Court of the Seneschal,

(r) acting as executor of the will of, or administrator of the

estate of, a person who was resident or domiciled in the Bailiwick at the time of the execution of the will or at the time of death, provided that the person so acting is a lawyer,

- (s) acting as trustee of testamentary trusts created by the will of a person who was resident or domiciled in the Bailiwick at the time of the execution of the will or at the time of death, provided that the person so acting is a lawyer,
- (t) the provision of advice or the drafting of documents by a lawyer, accountant or actuary in the ordinary course of carrying on the profession of lawyer, accountant or (as the case may be) actuary,
- (u) the drafting of minutes of meetings by a lawyer, accountant or actuary,
- (v) the preparation and auditing of accounts,
- (w) activities undertaken in the course of a profession or business –
  - (i) which are undertaken without separate or additional remuneration (whether from the client concerned or from a third party), and
  - (ii) which are incidental to the carrying on of that

profession or business,

provided that persons carrying on the profession or business do not hold themselves out as undertaking those activities,

(x) the activities of the Ecclesiastical Court and Registrar thereof in relation to the granting of probate and letters of administration,

(y) the provision of accommodation addresses (within the meaning of section 2(1)(b)(ii)(D)) –

(i) by a person -

(A) holding a licence of the Guernsey Competition and Regulatory Authority granted under Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001 or exempted from the requirement to hold such a licence under section 1(2) or (3) of that Law, or

(B) holding a licence of the Guernsey Competition and Regulatory Authority granted under Part I of the Post Office (Bailiwick of Guernsey) Law, 2001 or exempted from the requirement to hold such a licence under section 1(2) or (3A)

of that Law,

- (ii) by an internet or telecommunications service provider, or
- (iii) where the address is provided solely for the service of process or the service of notice under a contract,
- (z) any activity carried on under the authority of and in accordance with the conditions of a licence, registration or authorisation granted by the Commission under any of the regulatory Laws,
- (aa) the creation, use or carrying on of an ancillary vehicle, or activity in respect of an ancillary vehicle, when notified to the Commission in accordance with rules made by the Commission under section 20 of the Protection of Investors Law, but subject to the provisions of the rules,
- (ab) the following activities when carried on by a licensed insurance intermediary within the meaning of Schedule 3 to the Insurance Managers and Intermediaries Law –
  - (i) the formation of, and the provision of advice in relation to the formation of, a retirement annuity scheme or retirement annuity trust scheme approved by the Director of the Revenue Service

under the provisions of Part XIII of the Income Tax Law, or

- (ii) the formation of, and the provision of advice in relation to the formation of, a pension scheme or gratuity scheme or a trust of a life assurance policy,
- (ac) any particular activity, transaction or appointment specifically exempted from the operation of section 1 by written instrument of the Commission; and for the purposes of this paragraph –
- (i) an application for such an exemption shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,
  - (ii) the application shall be accompanied by such fee as may be prescribed by regulations under section 7,
  - (iii) the application may be refused or granted subject to such conditions as the Commission may consider necessary or expedient,
  - (iv) 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,

- (v) the exemption may be revoked or varied at any time by the Commission by written notice to the person to whom it was granted,
- (vi) 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,
- (vii) the exemption shall, subject to the provisions of subparagraph (v), be valid for such period (if any) as the Commission may determine, and
- (viii) if, whether before or after the grant of an exemption, 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 exemption was granted for the purposes of the application or exemption (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

- (ix) a failure to comply with any requirement arising by virtue of subparagraph (viii) 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 exemption.

(2) The Committee may by regulation amend subsection (1) –

- (a) by adding any exemption to it or removing any exemption from it,
- (b) by removing, relaxing or extending any condition or restriction set out in it or by imposing any new condition or restriction.

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

(4) Where circumstances change such that an exemption under this section in respect of -

- (a) a person, or
- (b) an activity or transaction carried out or appointment or position held by a person,

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

(5) For the avoidance of doubt, an activity which is not exempted from the operation of section 1 by or under the provisions of this section shall not, by reason of that fact alone, be deemed to be a regulated activity; and, accordingly, the question of whether or not that activity is a regulated activity shall be determined solely by reference to the provisions of section 2.

### *Licensing*

#### **Categories of fiduciary licences.**

4. (1) Fiduciary licences granted by the Commission under section 6 shall be of the following categories –

- (a) a primary fiduciary licence,
- (b) a secondary fiduciary licence, and
- (c) a personal fiduciary licence.

(2) A primary fiduciary licence –

- (a) may only be granted to a company or other legal person or a partnership,
- (b) may not be granted to a body which has a corporate



director (or a corporate general partner, in the case of a limited partnership, or corporate member, in the case of a limited liability partnership),

- (c) shall authorise the licensed fiduciary, for the purposes of this Law and subject to the conditions of the licence

–

- (i) to carry on by way of business, in or from within the Bailiwick, any regulated activities, and

- (ii) where the licensed fiduciary is a Bailiwick body, to carry on by way of business, in or from within any place whatsoever, any regulated activities, and

- (d) shall authorise any director, partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership) or employee of the licensed fiduciary, for the purposes of this Law and subject to the conditions of the licence –

- (i) to carry on by way of business, in or from within the Bailiwick, any regulated activities, and

- (ii) where the licensed fiduciary is a Bailiwick body, to carry on by way of business, in or from within any place whatsoever, any regulated activities,

provided that the person so authorised carries on those activities only in the course of that person's duties as a director, partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership) or (as the case may be) employee of the licensed fiduciary.

(3) A secondary fiduciary licence -

(a) may only be granted to a company or other legal person or a partnership which is a subsidiary of or wholly beneficially owned by -

(i) the holder of a primary fiduciary licence, or

(ii) the holding company of the holder of a primary fiduciary licence,

(b) may be granted to a body which has a corporate director (or a corporate general partner, in the case of a limited partnership, or corporate member, in the case of a limited liability partnership),

(c) may authorise the licensed fiduciary, for the purposes of this Law and subject to the conditions of the licence and subject to the provisions of any rules under section 34 –

(i) to carry on by way of business, in or from within

the Bailiwick, any regulated activities, and

- (ii) where the licensed fiduciary is a Bailiwick body, to carry on by way of business, in or from within any place whatsoever, any regulated activities, and

- (d) may authorise any director, partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership) or employee of the licensed fiduciary, for the purposes of this Law and subject to the conditions of the licence –

- (i) to carry on by way of business, in or from within the Bailiwick, any regulated activities, and

- (ii) where the licensed fiduciary is a Bailiwick body, to carry on by way of business, in or from within any place whatsoever, any regulated activities,

provided that the person so authorised carries on those activities only in the course of that person's duties as a director, partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership) or (as the case may be) employee of the licensed fiduciary.

- (4) A personal fiduciary licence –

- (a) may only be granted to an individual,
- (b) shall authorise the licensed fiduciary, for the purposes of this Law and subject to the conditions of the licence, to carry on by way of business, in or from within the Bailiwick, the following regulated activities –
  - (i) acting as director of any body, or as partner of any partnership (or member, in the case of a limited liability partnership), whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere,
  - (ii) acting as trustee (provided that the licensed fiduciary does not act as a sole trustee) or as enforcer or protector for trusts,
  - (iii) acting as, or accepting an appointment made by will as, an executor of a will or administrator of an estate,
  - (iv) acting as foundation official for foundations, but only where the individual is resident in Guernsey.

**Applications for fiduciary licences.**

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

(2) The application shall state whether the applicant wishes to obtain a primary fiduciary licence, a secondary fiduciary licence or a personal fiduciary licence.

(3) The application shall also state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on a regulated activity.

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

- (a) a statement of the applicant's proposed regulated activities,
- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application, and
- (c) the appropriate fee prescribed by regulations under section 7,

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

(5) Upon receipt of an application for a fiduciary licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be the holder of a supervised role in respect of the applicant to

provide such additional information, statements or other documents as the Commission may reasonably require for the purpose of determining the application.

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

- (a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information, statement or other document as the Commission may specify,
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement, document or report or anything in them.

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

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

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

- (a) the applicant has failed for -

- (i) a period of three months, or
- (ii) such longer period as the Commission may have specified by notice in writing to the applicant,

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

- (b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

- (c) a period of 14 days has expired following the giving of that notice, and

- (d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) -

- (i) that notice has not been withdrawn by the Commission, and

- (ii) the information, statement or other document in question has not been provided.

(10) Before deciding whether or not to grant a fiduciary licence the Commission shall, if the application contains a statement under subsection (3) to the effect that the applicant proposes to carry on a regulated activity in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(11) If at any time a licensed fiduciary proposes to carry on a regulated activity in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (10).

**Grant or refusal of fiduciary licences.**

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

- (a) subject to the provisions of subsection (2), grant the application and issue a fiduciary licence to the applicant, or
- (b) refuse the application.

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

- (a) in relation to the applicant, and
- (b) in the case of an application for a primary fiduciary licence or secondary fiduciary licence, in relation to any



person who is or is to be the holder of an approved supervised role or vetted supervised role in respect of the applicant.

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

- (a) the provisions of any code of practice or guidance issued under section 37 of this Law or section 57 or 120 of the Enforcement Powers Law, and
- (b) any matter to which it may have regard under the provisions of section 28 or 29 of the Enforcement Powers Law when considering whether or not to suspend or revoke a fiduciary licence.

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

**Fees regulations and recovery of fees.**

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

- (a) any of the matters specified in subsection (2), and
- (b) such other matters as the Committee may by regulation

prescribe for the purposes of this Law.

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

- (a) applications for or in respect of, and the grant, renewal or variation of, fiduciary licences,
- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification under the provisions of or for the purposes of this Law,
- (c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,
- (d) any other matters in respect of licensed fiduciaries or fiduciary 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 fiduciary by or in respect of whom, or in respect of whose fiduciary 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 53(2), regulations under this section may make different provision in respect of -

- (a) different categories, classes or descriptions of fiduciary licence or licensed fiduciary or different categories,

classes or descriptions of regulated activities, or

- (b) the same categories, classes or descriptions of fiduciary licence or licensed fiduciary or the same category, class or description of regulated activities, for different purposes or in respect of different circumstances.

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

**Conditions of fiduciary licences.**

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

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

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

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a fiduciary licence may make provision as to the duration of the licence and for the protection of the clients or potential clients of the licensed fiduciary; and without limitation such conditions may

—

- (a) require the licensed fiduciary to take certain steps, to

refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,

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

of solvency of the business of the licensed fiduciary,

- (i) require the licensed fiduciary to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (j) prohibit, restrict or impose limitations on the carrying on by way of business of regulated activities, or any class or description of regulated activities, in or from within any place, or any particular place, outside the Bailiwick –
  - (i) by the licensed fiduciary itself,
  - (ii) by any undertaking established by the licensed fiduciary (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).

(5) A licensed fiduciary which contravenes any condition of a fiduciary licence is guilty of an offence.

(6) The contravention of a condition of a fiduciary licence is, whether or not constituting an offence under subsection (5), a ground for the

suspension or revocation of the licence (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

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

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

#### **Surrender of fiduciary licences.**

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

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

(3) The surrender of a fiduciary licence is, subject to the provisions of subsection (5), irrevocable unless it is expressed to take effect on a particular date



and before that date the Commission, upon the written application of the licensed fiduciary, by notice in writing to the licensed fiduciary allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a fiduciary licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 21, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

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

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

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

Law.

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

### *Principles of conduct*

#### **Principles of conduct for licensed fiduciaries.**

10. (1) A licensed fiduciary 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 regulated activities in relation to which it is acting as licensed fiduciary, which ought reasonably to be disclosed to the Commission.

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

### *Directions*

#### **Power to issue directions.**

11. (1) The Commission may, at any time, by notice in writing, give such directions to any person referred to in subsection (2) (the "**directed person**"), requiring 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 licensed fiduciary,
- (b) subject to the provisions of subsection (5), a former licensed fiduciary,
- (c) a person carrying on by way of business regulated activities -
  - (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 activities,
- (d) a person who is the holder of a supervised role in respect of, or is an officer or employee of -
  - (i) a licensed fiduciary, or
  - (ii) a person described in paragraph (c),
- (e) a person who has or is reasonably suspected of having contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed,

issued or arising under any of the provisions of this Law or the regulatory Laws,

- (f) an ancillary vehicle of a person or entity specified in any other paragraph of this subsection, or
- (g) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

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

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

- (a) require the directed person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) prohibit or impose limitations on the acceptance of the business of or the carrying on of regulated activities and other business, or on the acceptance or repayment of client assets, the granting of credit or the making of investments,
- (c) prohibit, restrict or impose limitations on the acceptance of the business of or the carrying on of regulated

activities, or any class or description of regulated activities, in or from within any place, or any particular place, outside the Bailiwick -

- (i) by the directed person,
  - (ii) by any undertaking established by the directed person (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (d) prohibit the directed person from soliciting (whether at all or in any specified manner) the business of regulated activities and other business, either generally or from specified persons or classes or descriptions of persons,
- (e) prohibit the directed person from entering into any other transaction or class or description of transactions,
- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,
- (g) specify requirements to be fulfilled otherwise than by

action taken by the directed person,

- (h) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and manner and containing such information and particulars, as may be so specified,
- (i) require the directed person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensed fiduciary, licensed 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>d</sup>), trust, assignment, lien,

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

right of set-off or other dealing except with the prior written consent of the Commission,

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

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

- (j) where the directed person is a licensed fiduciary, and without prejudice to paragraph (i), 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 belong to –

- (A) an investment company the shares in which belong to clients, or
  - (B) some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by clients,
- (k) require the directed person to provide evidence of -
- (i) compliance with -
    - (A) any provision of this Law and the regulatory Laws, or
    - (B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and
  - (ii) fulfilment of any of the applicable minimum criteria for licensing (whether in relation to the directed person or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the directed person),

in whatever form and manner and at whatever time the



Commission may reasonably determine,

- (l) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, require the directed person to take all reasonable steps to procure the transfer of all or any of the directed person's clients to another licensed fiduciary acceptable to the Commission,
  - (m) require the directed person to prepare consolidated accounts (in addition to any accounts required to be prepared by virtue of the provisions of this Law),
  - (n) require the directed person to appoint a compliance officer,
  - (o) require the directed person to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission,
  - (p) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
  - (q) contain such ancillary, incidental and supplementary provision as the Commission may determine.
- (5) A direction may be imposed on a former licensed fiduciary only

within a period of six years immediately following the date on which the former licensed fiduciary 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, a direction imposed on a former licensed fiduciary within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

(6) A direction may be imposed on a person or entity which has at any time been or been deemed to be a directed person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is currently a directed person of that class or description, but only for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

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

This subsection does not apply to a former licensed fiduciary.

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

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

For the avoidance of doubt, a direction imposed on a licensed fiduciary 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 fiduciary 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 this section is guilty of an offence.

(9) Where the directed person is a licensed fiduciary, 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 fiduciary 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 6 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for, or (as the case may be) to suspend or revoke, a fiduciary 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.

*Supervised roles*

**Supervised roles.**

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

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

- (d) a money laundering reporting officer,
- (e) a money laundering compliance officer, or
- (f) a compliance officer,

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

(2) A person who, in relation to a body, is appointed as or otherwise becomes the holder of any such position, interest or role as the Committee may specify by regulation as being a vetted supervised role for the purposes of this Law shall be deemed for those purposes 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 15.

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

- (a) a significant shareholder,
- (b) 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 regulated activities 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 3 of Schedule 1 (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 (2) or in any other paragraph of this subsection,

- (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 16.

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

(5) For the avoidance of doubt, the fact that a person is the holder of a supervised role does not of itself establish that 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.

*Information as to fiduciaries*

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

13. (1) The Commission shall establish and maintain, in such form as the Commission may determine, and cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of all persons holding fiduciary licences (“**the list**”); and the list shall state, in relation to each person mentioned, the category of fiduciary licence held by that person.

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

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

- (a) the name of the licensed fiduciary,
- (b) the addresses or principal places of business of the licensed fiduciary in the Bailiwick,
- (c) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of -
  - (i) any conditions imposed in respect of the fiduciary licence,
  - (ii) any directions given to the licensed fiduciary, or



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

(d) such other particulars as the Commission may determine.

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

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

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

(a) whether in consequence of -

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

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

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

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

as the Commission considers necessary.

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

*Notification of holding of approved and vetted supervised roles, etc  
and acquisition of voting power*

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

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

- (a) A or the licensed fiduciary 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 fiduciary 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 7;

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 fiduciary;
- (b) that the interests of clients or potential clients of the licensed fiduciary 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 fiduciary 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 fiduciary; and

(B) where a primary fiduciary licence or secondary fiduciary licence is held, 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 fiduciary; or

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

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

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

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

15. (1) A person ("B") shall not become the holder of a vetted supervised role in respect of a licensed fiduciary unless -

(a) B or the licensed fiduciary 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 fiduciary 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 fiduciary 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 fiduciary.

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

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

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

(b) that the interests of clients of the licensed fiduciary 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 fiduciary 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 fiduciary; and

(B) where a primary fiduciary licence or secondary fiduciary licence is held, 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 fiduciary;

or

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

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

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

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

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

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

(3) A notice required to be given under subsection (1) shall be given

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

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

and following receipt of such notice from a licensed fiduciary, the Commission may by notice in writing require the licensed fiduciary 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 fiduciary or class, description or category of licensed fiduciary 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 fiduciary (“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.

**Notification of acquisition of significant shareholding.**

17. (1) A person who becomes a significant shareholder in relation to a licensed fiduciary 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 7;

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 fiduciary or class, description or category of person or licensed fiduciary 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 on which A became or ought reasonably to have become so aware.

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

*Representations, notice of decisions  
and appeals*

**Representations concerning proposed decisions of Commission.**

18. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 21, other than a decision to serve a notice under section 15 or 26, the procedure prescribed in this section shall be followed.

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

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

(ii) any notice proposed to be served,

- (d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine,
- (e) containing or accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 20(2)), and
- (f) giving particulars of the right of appeal which would be exercisable under section 21 if the Commission were to make the proposed decision.

(3) Where -

- (a) a ground for the proposed decision is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

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

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

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

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

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

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority

of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of Commission.**

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

- (a) shall be served by the Commission on the person concerned,
- (b) shall state the terms of and the grounds for the decision,
- (c) shall set out particulars of or be accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall contain or be accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the decision (but subject to the provisions of section 20(2)), and
- (e) shall give particulars of the right of appeal conferred by section 21;

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

(2) Where -

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

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

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

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

- (a) under section 19(1) or (2) of a decision in respect of which a right of appeal is conferred by section 21, or
- (b) under section 18(2) or (3) stating that the Commission is proposing to make such a decision,

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

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

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

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

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

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

- (a) under section 6(1), to refuse an application for a fiduciary licence,

- (b) under section 8, to impose any condition in respect of a fiduciary licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
- (c) to refuse to vary or rescind any condition so imposed,
- (d) under section 9 -
  - (i) not to allow the surrender of a fiduciary licence to be withdrawn, or
  - (ii) not to give consent to the surrender of a fiduciary licence,
- (e) under section 11(1) or 24(7), to give any direction or to vary or rescind any direction so given,
- (f) to refuse to vary or rescind any direction so given,
- (g) under section 27, to appoint or require the appointment of a skilled person,
- (h) under section 14 (notification of approved supervised roles), to serve a notice of objection;
- (i) under section 15 (notification of vetted supervised roles), to serve a notice of objection;



- (j) under section 26, to serve a notice under that section,
- (k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons provided pursuant to section 20(1),
- (l) 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
- (m) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the person to whom the ground relates or whose removal or replacement is required

may appeal to the Royal Court against the finding that there is a ground for the decision or, as the case may be, against the decision to require 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<sup>e</sup>.

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

- (a) set the decision of the Commission aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Royal Court thinks fit, or
- (b) confirm the decision, in whole or in part.

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

- (a) subsection (1)(b),

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

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

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

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

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and, unless the Royal Court orders otherwise, the information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing the appellant.

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

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

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

**Restriction on successive challenges.**

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

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

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

- (i) an appeal under section 21 relating to a previous such application in respect of that person has been commenced but not yet determined, or
  - (ii) within the period of 12 months immediately preceding receipt of that further application -
    - (A) a previous such application in respect of that person has been determined by the Commission, or
    - (B) an appeal under section 21 relating to a previous such application in respect of that person has been determined.
- (2) The orders and other decisions to which this section applies are
- 
- (a) a decision under section 8 to impose, vary or rescind any condition in respect of a fiduciary licence,
  - (b) a decision to refuse to vary or rescind any such condition,
  - (c) a decision under section 11(1) or 24(7) to give any direction or to vary or rescind any direction so given,
  - (d) a decision to refuse to vary or rescind any direction so given,

- (e) a decision to appoint or require the appointment of a skilled person under section 27,
- (f) a decision to serve notice of objection under section 14 (objection to holders of approved supervised role),
- (g) a decision to serve notice of objection under section 15 (objection to holders of vetted supervised role),
- (h) an order or other decision of a class or description specified by regulations of the Committee.

*Advertising for business, etc*

**Control of advertising.**

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

(2) Regulations under this section may, without prejudice to the generality of subsection (1) or section 53 –

- (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 fiduciary 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 categories of fiduciary licence.

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

(4) A person ("A") whose business it is to publish or arrange for the publication of advertisements is not guilty of an offence under subsection (3) 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.



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

- (a) an invitation to become a client of or to use services provided by any person carrying on or offering to carry on by way of business any regulated activities, or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to a person becoming such a client or using such services.

(6) For the purposes of this section –

- (a) an advertisement issued or caused or permitted to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused or permitted to be issued by that person on every day on which that person causes or permits it to be displayed or exhibited,
- (b) the issue of an advertisement containing an invitation to become a client of or to use services provided by a person specified in the advertisement, being a person carrying on or offering to carry on by way of business any regulated activities, shall, unless the contrary is proved (for the avoidance of doubt, on a balance of probabilities), be presumed to have been caused by that person,

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

(7) If the Commission considers that –

- (a) any fiduciary 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.

(8) A direction under this section may (without limitation) contain any or all of the following –

- (a) a prohibition on the issue of any advertisements or any advertisements of a specified class or description,
- (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is

identified in the direction,

- (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified class or description,
- (d) a requirement that any advertisements or any advertisements of a specified class or description shall be modified in a specified manner,
- (e) such ancillary, incidental and supplementary provision as the Commission may determine.

(9) A direction under this section –

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

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

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

- (a) the occurrence of such date, time, event or circumstance

as may be specified in it,

- (b) such prohibitions, restrictions or requirements as may be so specified are complied with, or
- (c) rescinded by the Commission, if earlier.

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

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

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

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

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

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

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

*Powers to obtain information  
and skilled persons, etc*

**Persons to whom section 26 applies.**

25. (1) In section 26 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensed fiduciary,
- (b) an applicant for a fiduciary licence,
- (c) a former licensed fiduciary, but subject to the provisions

of subsection (2),

(d) a person carrying on any class or description of regulated activities -

(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 regulated activities,

(e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of regulated activities, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(f) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,

(g) where a person (person A) who is a relevant person by virtue of paragraph (f) is itself a company or other legal person, any person who is the holder of a supervised

role in respect of, or an officer of, person A,

(h) an employee of, or a person who is or has at any time been directly or indirectly employed (whether or not under a contract of employment) by, a relevant person specified in any other paragraph of this subsection,

(i) any person or entity -

(i) which has or has at any time had any direct or indirect proprietary, financial, economic or other interest in or connection with a relevant person specified in any other paragraph of this subsection, or

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

but subject to the provisions of subsection (5),

(j) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(k) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(l) a special purpose vehicle or ancillary vehicle of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(m) a person who is a significant shareholder of a relevant person specified in any other paragraph of this subsection, where that relevant person is a company,

(n) a company of which the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection is a controller, but subject to the provisions of subsection (5),

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

(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 regulated activities, 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 26 apply in relation to a former licensed fiduciary only for a period of six years immediately following the date on which that former licensed fiduciary 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 26 are exercised in respect of a former licensed fiduciary within that six year period, they may continue to be exercised in respect of that former licensed fiduciary after the expiration of that period.

(3) The provisions of section 26 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 26 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 fiduciary.

(4) For the avoidance of doubt, if the powers conferred by section 26 are exercised in respect of a licensed fiduciary 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 fiduciary 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 26 may be exercised in relation to a person or entity referred to in subsection (1)(i), an associated party referred to in subsection (1)(j), a group entity referred to in subsection (1)(k), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(l) or a company referred to in subsection (1)(n) only -

- (a) where it appears necessary or desirable to the

Commission to do so -

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

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

26. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 25 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 fiduciary holding a primary fiduciary licence or secondary fiduciary licence, 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 (11) 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.**

27. (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 fiduciary,
- (b) an applicant for a fiduciary licence,
- (c) a former licensed fiduciary, but subject to the provisions of subsection (5),
- (d) a person carrying on any class or description of regulated activities -
  - (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 activities,

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

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensed fiduciary 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 fiduciary 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 this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5) of the Banking Supervision Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such an inspected person.

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



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

28. A person (“A”) upon whom a requirement is imposed by or under the provisions of section 26 or 27 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 26 or 27,

and who removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which 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.

**Retention of documents.**

29. (1) The following persons or entities -

- (a) a licensed fiduciary,

(b) a person carrying on any class or description of regulated activities -

(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 regulated activities,

(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 fiduciary, or

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

as the case may be.

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

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

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

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

- (a) the form in which documents and information are to be retained and made available,
- (b) the classes or descriptions of document or information to which this section does, or does not, apply,
- (c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1) must make in respect of the retention of documents and

information in the event of their dissolution, winding up, cessation or deregistration, and

- (d) the duties and obligations of persons who, pursuant to arrangements described in subsection (1), retain or have possession or control of the documents and information of a person or entity of a class or description specified in any paragraph of subsection (1) which has been dissolved, wound up or deregistered or which has otherwise ceased.

(6) Rules under this section may provide that this section shall have effect in respect of any person or entity or class or description of person or entity subject to such exceptions, adaptations and modifications as may be specified in the rules.

#### *Accounts and auditors*

#### **Rules as to accounts, etc.**

30. (1) The Commission may make rules prescribing –
- (a) the preparation, keeping, maintenance, submission to the Commission and publication of accounting records,
  - (b) the form in which –
    - (i) a licensed fiduciary's accounting records, and
    - (ii) where the licence held is a primary fiduciary

licence or secondary fiduciary licence, the auditor's report on the licensed fiduciary's accounts,

are to be,

- (c) the information and particulars to be contained in accounting records and auditors' reports, and the documents to be appended to or accompany them, being, where the licence held is a personal fiduciary licence, information, particulars and documents relating only to the carrying on by the licensed fiduciary, by way of business, of regulated activities,
- (d) the occasions, times, intervals or places at which, the periods in respect of which and the form and manner in which -
  - (i) accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection, and
  - (ii) any other accounting records, auditors' reports and documents -
    - (A) of a class or description specified in the rules, or
    - (B) required by the Commission in the

interests of the public or the reputation of  
the Bailiwick as a finance centre,

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

are to be drawn up, furnished and delivered, and

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

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

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

financial records and other associated records and documents.

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

- (a) exempt any licensed fiduciary or other person or class, description or category of licensed fiduciary or person from the application of all or any of the requirements of this section or any rules made under it, either generally or in any particular case or class of case, and whether before or after the event in question, and
- (b) without prejudice to the provisions of paragraph (a), require a licensed fiduciary or other person, instead of compliance with the requirements of this section or any rules made under it, to furnish to the Commission upon request an abridged version of any accounting records required to be kept by or under the provisions of this section or the rules in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

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

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

any rules made under it,

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

**Notification in respect of auditors.**

31. (1) A licensed fiduciary other than the holder of a personal fiduciary licence shall appoint auditors as auditors to the licensed fiduciary; and whenever an appointment under this section comes to an end the licensed fiduciary shall, as soon as is reasonably practicable and in any case within a period of 28 days after the day on which that appointment came to an end (or such longer period as the Commission may, in its absolute discretion, by written notice allow) make a fresh appointment of auditors as auditors to the licensed fiduciary.

(2) A licensed fiduciary making an appointment under this section shall immediately give the Commission written notice stating -

(a) the date of the appointment, and

(b) the name and qualification of the person appointed,

and if an appointment under this section comes to an end the licensed fiduciary 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 subsection (2), a licensed fiduciary which is a company shall immediately give written notice and explanation to the Commission –



- (a) if the licensed fiduciary proposes to give special notice to its members of a resolution removing an auditor before the expiration of the auditor's term of office,
- (b) if the licensed fiduciary gives notice to its members 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 licensed fiduciary otherwise than pursuant to such a resolution.

(4) An auditor of a licensed fiduciary 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 fiduciary,

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 fiduciary as they apply in relation to a licensed fiduciary, but only, subject to the provisions of subsection (6), for a period of six years immediately following the date on which the former licensed fiduciary ceased to hold a fiduciary licence.

(6) Where an auditor of a former licensed fiduciary 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 fiduciary,

by reason of any fraud of –

- (i) the former licensed fiduciary, 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 fiduciary licence, the time limit of six years

specified in subsection (5) does not apply.

(7) A licensed fiduciary or former licensed fiduciary who 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 fiduciary, former licensed fiduciary or auditor or class, description or category of licensed fiduciary, former licensed fiduciary or auditor from the application of all or any of the requirements of subsection (1), (2), (3) or (4), either generally or in any particular case or class of case, and whether before or after the circumstance, event or occasion in question.

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

32. (1) No duty to which –

(a) an auditor, or

(b) a person appointed to make a report under section 5(6)(a) or as a skilled person pursuant to the provisions of section 27,

is subject is contravened by reason of the auditor 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
- (b) a person appointed to make a report under section 5(6)(a) or as a skilled person pursuant to the provisions of section 27,

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

- (i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on by way of business any regulated activities or to be the holder of a supervised role in respect of a licensed fiduciary, or
- (ii) whether the Commission should perform its functions under the provisions of this Law or any other enactment for the purposes of the protection of the public or the reputation of the Bailiwick as a finance centre.

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

- (a) a licensed fiduciary,

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

(4) In relation to a person appointed to make a report under section 5(6)(a) or as a skilled person pursuant to the provisions of section 27, 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 fiduciaries, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

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

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

33. (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 fiduciary or former licensed fiduciary (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.

*Making of rules, codes and guidance*

**Rules of the Commission.**

34. The Commission may make rules in relation to regulated activities and

the carrying on thereof by licensed fiduciaries and generally as to the conduct of, and the manner in which licensed fiduciaries conduct, or hold themselves out as conducting, their business.

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

35. Rules under section 34 may, without limitation –

- (a) set out general conditions applicable to licensed fiduciaries (and accordingly make provision for matters in respect of which conditions may be imposed under section 8),
- (b) prescribe the manner in which licensed fiduciaries 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 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 regulated activities being carried on including, without limitation, regulated activities in relation to pension schemes and gratuity schemes,
- (vi) insurance cover of any class or description,
- (vii) financial resources,
- (viii) business assets,
- (ix) technical provisions,
- (x) requirements in respect of capital, capital resources, funds and liquidity, and

- (xi) the calculation, maintenance and approval of anything described in the above subparagraphs,
- (c) prohibit licensed fiduciaries from carrying on, or holding themselves out as carrying on, regulated activities –
  - (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 fiduciaries of any discretionary powers afforded to them by clients,
- (e) require licensed fiduciaries to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any regulated activity, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed fiduciaries

and their servants and agents and, without limitation -

- (i) require licensed fiduciaries to impose and enforce restrictions on the activities carried on by their servants and agents,
  - (ii) enable or require information obtained in the course of carrying on any class or description of the regulated activities of a licensed fiduciary to be withheld from persons involved in carrying on any other class or description of the regulated activities of that licensed fiduciary,
- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of regulated activities,
- (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 fiduciaries to make provision for the protection of clients 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, fiduciary 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 fiduciaries 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 fiduciaries,

(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,

(m) make provision as to the dealings and relationship of



licensed fiduciaries with -

- (i) other licensed fiduciaries,
  - (ii) other persons carrying on regulated activities,
  - (iii) other persons or bodies holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
  - (iv) clients and potential clients of persons described in subparagraphs (i) to (iii), and
  - (v) the Commission,
- 
- (n) impose on licensed fiduciaries 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 fiduciaries, and
  - (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, fiduciary licences and other relevant documents, including (without limitation) provision –

- (i) prescribing the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,
- (ii) prescribing the form and content of relevant documents,
- (iii) as to the renewal of relevant documents,
- (iv) prescribing minimum requirements (as to capital, solvency, management, staff, resources and any other matter referred to in paragraph (b)) to be attained by an applicant for a relevant document,

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

**Rules as to annual return.**

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

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

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism,
- (c) in the interests of -
  - (i) the public, or
  - (ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 49).

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

- (a) audited accounts and auditors' management letters (or

confirmation that the auditors have confirmed that no auditors' management letter is required to be issued),

- (b) a statement of income (in the case of the holder of a personal fiduciary licence),
- (c) a financial statement in respect of any pension scheme or gratuity scheme in relation to which regulated activities are being carried on,
- (d) an up to date business plan,
- (e) a 12 month financial forecast,
- (f) a certificate signed by a prescribed person confirming -
  - (i) compliance throughout the period covered by the annual return with the provisions of this Law, the appointed Laws and any other prescribed enactment,
  - (ii) that accounts have been prepared and deposited in accordance with the provisions of this Law,
- (g) 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 fiduciary,
- (h) the number of staff employed,

- (i) the number of clients, whether in total or whether in respect of different classes or descriptions of regulated activity,
- (j) the licensed fiduciary's estimate of the value of assets under administration,
- (k) such other information and documents as may be prescribed or as the Commission may determine.

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

- (a) the furnishing, keeping and obtaining, by persons of prescribed descriptions, of information, documents and records of prescribed classes or descriptions,
- (b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,
- (c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,
- (d) the provision of reports, in such form as may be

prescribed or as the Commission may determine, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,

- (e) the payment of any fees prescribed by regulations under section 7 in respect of the submission of annual returns,
- (f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,
- (g) the service of notices,
- (h) the submission of a single or composite return for licensed fiduciaries who also hold a licence under any of the regulatory Laws.

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

**Codes of practice and guidance.**

- 37. (1) The Commission, after consultation with –
  - (a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and
  - (b) such other persons as appear to the Commission to be appropriate,

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

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

- (A) persons carrying on by way of business any regulated activity, or

- (B) any other persons to whom the code or guidance applies,

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

and without limitation a code of practice or guidance under this section may make

provision in respect of any matter in respect of which rules may be made under section 30, 34 or 36.

(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 is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

### PART III

#### DISCLOSURE OF INFORMATION



**Restrictions on disclosure of information.**

38. (1) Subject to the provisions of section 39 –

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

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

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

**Cases where disclosure is permitted.**

39. Section 38 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 the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,

(c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensed fiduciary or former licensed fiduciary 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 of a licensed fiduciary or former licensed fiduciary, or
  - (ii) a person appointed to make a report under section 5(6)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5) of the Banking Supervision Law, section 6(5)(a) or 36 of the Insurance Business 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 27 of this Law or the corresponding provisions of the regulatory Laws,
- (k) the disclosure by the Commission to Her Majesty's

Procureur or an officer of police of -

- (i) information obtained under the provisions of section 26 or 27 of this Law or sections 7 to 13 of the Enforcement Powers Law, or
  - (ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or entity responsible for a scheme for compensating clients (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 80 of the Insurance Business Law,

(v) section 57 of the Insurance Managers and Intermediaries Law, or

(vi) section 20 of the Enforcement Powers Law, or

(o) the disclosure of information for the purpose of enabling or assisting -

(i) the Registrar of Companies,

(ii) the Alderney Registrar,

(iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid

(Bailiwick of Guernsey) Law, 2003),

- (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
- (v) the Principal Ombudsman appointed under section 4 of that Law,
- (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),
- (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),
- (viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or
- (ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

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

40. (1) This section applies, to the exclusion of section 38, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) -

- (a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,
- (b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and
- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

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

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

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions



(whether as to the use and disclosure of the information or otherwise) subject to which the consent of the relevant supervisory authority was given.

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

(a) for the purposes or in the circumstances described in section 39(h), or

(b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

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

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

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

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

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

41. 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)

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(a) take into account -

(i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to which the Commission is subject in respect of the information,

(ii) any undertaking entered into by the Commission in relation to the use, disclosure, safekeeping and return of the information, and

(iii) any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the information is held or was received or obtained, and

(b) where the information has been supplied to the Commission by a relevant supervisory authority -

- (i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and
- (ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it.

#### PART IV

#### OFFENCES AND PENALTIES

##### **Penalties.**

42. (1) A person guilty of an offence under section 16(5), 17(4), 24(3), 30(5) or 31(7) or (8) is liable –

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

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

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

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

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

**Criminal liability of directors, etc.**

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

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

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

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

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

the person referred to in the appropriate paragraph above 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.

**Criminal proceedings against unincorporated bodies.**

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

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is

bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

the person referred to in the appropriate paragraph above as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

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

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

#### **Defence of due diligence.**

45. 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.

#### **Jurisdiction.**

46. Without prejudice to any jurisdiction exercisable apart from this

section, proceedings for an offence under the provisions this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

PART V  
GENERAL PROVISIONS

*Miscellaneous*

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

47. (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 regulated activities 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 fiduciary, 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.

**Service of notices and documents.**

48. (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 49, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

and in this section –

- (i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,
- (ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,
- (iii) **"relevant electronic address"** means an electronic address -

- (A) with which, in the opinion of the Commission, the person concerned has a

personal, business or other connection,  
and

(B) a document transmitted to which is  
likely to come to 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 court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the “**appropriate Court**” means –

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

jurisdiction of that Court,

(c) the Royal Court, in any other case.

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

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

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

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

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

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

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and

the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

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

49. (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>i</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>j</sup> and the Electronic Transactions (Sark) Law, 2001<sup>k</sup>.

**Verification of information.**

50. (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.

**Evidence.**

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

- (a) that a particular person is or is not a licensed fiduciary or former licensed fiduciary or was or was not a licensed fiduciary or former licensed fiduciary at a particular time,

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

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

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



- (b) the date on which a particular person obtained or ceased to hold a fiduciary licence,
- (c) the terms of any conditions imposed in respect of a particular fiduciary licence,

is admissible in evidence.

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

*Liability of States, Commission, etc*

**Exclusion of liability.**

52. (1) No liability shall be incurred -

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

- (e) by any other person or entity specified by Ordinance of the States,

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

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>1</sup>.

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

*Ordinances, regulations and rules, etc*

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

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

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

- (2) Any Ordinance, regulation, rule, code, guidance, principles,

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<sup>1</sup> Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; and G.S.I. No. 27 of 2006.

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 or regulation -
  - (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (3)),
  - (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
  - (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.
- (3) The power conferred by subsection (2)(b)(i) and by any other

provision of this Law to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment,
  - (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
  - (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.
- (4) The States may by Ordinance empower -
- (a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and
  - (b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

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

(5) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, code, guidance, principles, policies or instructions may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance

under the provisions of this Law (other than an Ordinance under section 64), consult

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

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

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

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 64) ceases to have effect –

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

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

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

(b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section -

(a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and

(b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).

(11) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

54. Regulations made under the provisions of this Law -

(a) where made by the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the

Policy and Finance Committee of the Chief Pleas of Sark,

- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

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

55. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions under the provisions of this Law, and



- (b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any fiduciary licences, consents, registrations, permissions and authorisations or otherwise in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the Commission may charge such fee -

- (a) as may be prescribed by regulations under section 7, or
- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

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

56. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

- (a) in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and

(b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render 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.

**Regulations and rules are statutory instruments.**

57. 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>m</sup>, the provisions of which shall apply accordingly.

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

58. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensed fiduciary or an applicant for a fiduciary licence, by notice in writing served on the licensed fiduciary or applicant adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular regulated activity carried on by, the licensed fiduciary 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 licensed fiduciary or applicant having regard to the benefit which compliance would confer on clients, and
- (b) the exercise of those powers will not result in any undue risk to clients.

(3) The powers conferred by subsection (1) may be exercised

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

unconditionally or subject to conditions.

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

*Interpretation, repeals, commencement, etc*

**Interpretation.**

59. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) –

"**accountant**" means a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>n</sup>,

"**actuary**" means -

- (a) a fellow of the Institute and Faculty of Actuaries in the United Kingdom (or a member or other person subject to the rules of such other body as the Committee may approve by regulation),
- (b) any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for -

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

- (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),

**"administration manager"** means a person appointed by the Royal Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"advertisement"** includes every form of advertising and any means of bringing an invitation or information to the notice of any person including, without limitation, by publication, broadcast, electronic means, circulars, notices, window displays, posters, brochures and leaflets, and references to the "issue" of an advertisement shall be construed accordingly,

**"advocate"** means an Advocate of the Royal Court of Guernsey,

**"Alderney company"** means a company the memorandum and articles

of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>o</sup>,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004<sup>P</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (Alderney) Law, 1994,

**"ancillary vehicle"** : see section 20(3) of the Protection of Investors Law,

**"appointed Laws"** means -

- (a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

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

<sup>P</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

**"appointed person"** : see section 26(1);

**"appropriate Court"** : see sections 11(13), 24(14) and 48(6),

**"approved supervised role"** : see section 12(1),

**"associate"**, in relation to any person, means –

- (a) the spouse, civil partner or child of that person,
- (b) a person with whom that person is living as if they were married or civil partners (a **"cohabitant"**),
- (c) any body of which that person is a director,
- (d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,
- (e) if that person is a company –

- (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (f) where that person is an unincorporated body, any director of that body,
- (g) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power (whether in general meeting or otherwise) in relation to a company, that other person:

Provided always that the Commission may by regulation amend the definition of "associate",

**"associated company"** means a company of a description set out in paragraph (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, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

Provided always that the Commission may by regulation amend the definition of "associated party",

**"auditor"** means -

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>9</sup> and who is, where required by or under the provisions of this Law, approved by the Commission to audit the accounts of licensed fiduciaries, or
- (b) any other person who performs or has performed the functions of an auditor of a licensed fiduciary,

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

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

**"Bailiwick body"** means -

- (a) a Guernsey body, being -
  - (i) a Guernsey company,
  - (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the

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<sup>9</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or

(iii) an unincorporated body whose principal place of business is in Guernsey,

(b) an Alderney body, being -

(i) an Alderney company, or

(ii) an unincorporated body whose principal place of business is in Alderney,

(c) a Sark body, being any body, other than one mentioned in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

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

**"body"** includes a company, any other legal person and an unincorporated body,

**"business day"** means any day other than -

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<sup>r</sup> Approved by the States of Deliberation on the \*\* August, 2020.

- (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>s</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>t</sup>,
  - (iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

**"by way of business"** : see subsection (3),

**"capital base"**, in relation to a licensed fiduciary, means the capital base determined by the Commission after consultation with the licensed fiduciary;

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<sup>s</sup> Ordres en Conseil Vol. XVII, p. 384; there are amendments not material to this enactment.

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

and any such determination may be varied from time to time,

**"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,

**"clients"**, in relation to any person, means –

- (a) persons who have entered into or may enter into agreements for the provision of services by that person when carrying on by way of business any regulated activities, or
- (b) persons who have received or may reasonably expect to receive the benefit of services provided or arranged or to be provided or arranged by that person when

carrying on by way of business any regulated activities,

**"close relative"** of a person means –

- (a) his spouse, civil partner or cohabitant,
- (b) his children, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters, and
- (c) the spouse, civil partner or cohabitant of any person within paragraph (b),

**"cohabitant"** : see paragraph (b) of the definition of "associate",

**"Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

the **"Committee"** means the States of Guernsey Policy and Resources Committee or such other committee as the States may specify by Ordinance;

**"committee"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

**"company"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"compliance officer"** means an officer, appointed by a licensed

fiduciary 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 licensed fiduciary, person or entity with -
  - (i) the provisions of this Law, the Financial Services Commission Law and the regulatory Laws,
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and
  - (iii) its policies and procedures relating to corporate governance, ethics and standards of conduct, and
- (b) fulfilment by that licensed fiduciary, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensed fiduciary, person or entity, of the applicable minimum criteria for licensing,

**"contract of employment"** means a contract of service or

apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

**"contravention"** includes failure to comply,

**"controller"**, in relation to a body, means -

- (a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>u</sup>;

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

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

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



**"directed person"** : see section 11(1),

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

- (a) in relation to information stored or recorded otherwise 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",

**"electronic address"** : see section 48(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>v</sup>,

**"enforcer"**, in relation to a trust, means a person other than a trustee who is appointed under the terms of the trust and who has the fiduciary duty to enforce the trust in relation to its non-charitable purposes,

**"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,

**"established place of business"**, in relation to a body, and without limitation, does not include an office in the Bailiwick at which is transacted only such administrative business as is necessary to enable that body to comply with the requirements of the Companies (Guernsey) Law, 2008, the Companies (Alderney) Law, 1994, the Partnership (Guernsey) Law, 1995, the Limited Partnerships (Guernsey) Law, 1995, the Limited Liability Partnerships (Guernsey) Law, 2013, the Foundations (Guernsey) Law, 2012, or any corresponding legislation in force in any jurisdiction outside the Bailiwick,

**"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

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<sup>v</sup> Approved by the States of Deliberation on the \*\* August, 2020.

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,

**"fiduciary licence"** means a primary fiduciary licence, secondary fiduciary licence or personal fiduciary licence granted by the Commission under section 6,

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

**"former licensed fiduciary"** means a person who –

- (a) does not hold and is not deemed to hold a fiduciary licence under this Law, but
- (b) has previously held or been deemed to hold such a licence or a fiduciary licence under the Regulation of Fiduciaries Law, 2000,

and also includes any person described in section 60(2) or (3),

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

**"foundation"** means -

- (a) a Guernsey foundation, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and however named),

**"foundation official"** means -

- (a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012<sup>x</sup>, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

**"functions"** includes duties, powers and privileges,

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

**"general partner"** means -

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<sup>x</sup> Order in Council No. I of 2013.

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>y</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),

"**gratuity scheme**" means a scheme (not being a fund, contract, scheme or trust described in paragraph (a), (b) or (c) of the definition of "pension scheme" below) which is established in connection with the carrying on of business or the exercise of functions and which has, for its sole or main purpose, the purpose of the provision of retirement benefits by means of the provision of a lump sum or other payments for persons employed in or in connection with the business or the exercise of the functions (or their spouses, children, dependants or other persons in respect of them), at a time or occasion (including, without limitation, the expiration of their term of service), or on the occurrence of an event or circumstance, or on compliance with requirements or conditions, specified in the rules of the scheme:

Provided always that the Committee may by regulation amend the definition of "gratuity scheme",

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

**"group"**, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

**"group entity"** means a body or entity carrying on regulated activities and which is not a licensed fiduciary but which is part of a group containing a licensed fiduciary,

**"Guernsey company"** means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>z</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) Law, 2013<sup>aa</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),

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

<sup>aa</sup> Order in Council No. VI of 2014.

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"holding company"** : see Schedule 2,

**"Income Tax Law"** means the Income Tax (Guernsey) Law, 1975<sup>bb</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, 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 27(4),

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



**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002,

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

**"international agreement"** means -

- (a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>cc</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,

**"internet or telecommunications service provider"** means a person who provides a service that consists of –

- (a) the emission, transmission, switching, conveyance or reception over a telecommunications system of

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<sup>cc</sup> Order in Council No. III of 1994.

information (including, without limitation, anything falling within paragraphs (a) to (e) of the definition of the expression "**telecommunications system**") provided by another person, or

(b) the provision of access to a telecommunications system,

**"investment company"** : see section 79(1) of the Protection of Investors Law,

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

**"lawyer"** means an advocate or –

(a) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland,

(b) a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland or in Scotland, or

(c) a person of any other class or description specified by regulations of the Committee,

**"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>dd</sup>,

**"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 holds a fiduciary licence,

**"limited liability partnership"** means -

- (a) a Guernsey limited liability partnership, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a 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>ee</sup>, and
- (b) in relation to a limited partnership falling within

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

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

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 laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"liquidator"** includes any person conducting a dissolution or winding

up and a receiver, administrator and administration manager,

**"member"**, in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008<sup>ff</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,

**"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 1,

**"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,

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

**"notified supervised role"** : see section 12(3),

**"officer"**, in relation to a company, includes a director, liquidator, manager and secretary thereof,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and –

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his 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>88</sup>,

(c) in relation to Sark -

(i) the Constable, an Assistant Constable and the

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<sup>88</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

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,

**"other supervised manager"** : see section 12(3)(b),

**"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,

**"pension scheme"** means any fund, contract, scheme or trust -

- (a) approved by the Director of the Revenue Service under section 150, 154A, 157A or 157E of the Income Tax Law,
- (b) established in Guernsey and recognised by the Director of the Revenue Service as being exempt from tax under section 40(o) of the Income Tax Law,

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

- (c) any annuity or lump sum payable pursuant to which is recognised by the Director of the Revenue Service as being exempt from tax under section 40(ee) of the Income Tax Law:

Provided always that the Committee may by regulation amend the definitions of "pension scheme",

**"person"** includes -

- (a) an individual,
- (b) a company,
- (c) any other legal person, and
- (d) an unincorporated body,

**"personal fiduciary licence"** : see section 4,

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

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

**"primary fiduciary licence"** : see section 4,

**"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>,

**"protector"**, in relation to a trust, means a person other than a trustee who, as the holder of an office created by the terms of the trust, is authorised or required to participate in the administration of the trust,

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

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<sup>ii</sup> Approved by the States of Deliberation on the \*\* August, 2020.

selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, clients and potential 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 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 the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

"**qualifying capital interest**" : see the definition of "related company" below,

"**recovery plan**" means a plan, in such form and containing such information as may be determined by the Commission and as may be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency),

"**Registrar of Companies**" means the holder for the time being of the office established under section 495(1) of the Companies (Guernsey) Law, 2008<sup>jj</sup>,

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

**"regulated activity"** : see section 2,

**"Regulation of Fiduciaries Law, 2000"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>kk</sup>,

**"regulatory Laws"** means –

- (a) the Protection of Investors Law,
- (b) the Banking Supervision Law,
- (c) the Insurance Business Law,
- (d) the Insurance Managers and Intermediaries Law,
- (e) the Financial Services Commission Law,
- (f) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,
- (g) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (h) the Enforcement Powers Law,

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<sup>kk</sup> No. I of 2001 (Ordres en Conseil Vol. XLI, p. 13); there are amendments not material to this enactment.

- (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 electronic address"** : see section 48(1)(iii),

**"relevant document"** : see section 35(p),

**"relevant person"** : see section 25(1),

**"relevant supervisory authority"** means -

- (a) an authority performing in the Bailiwick or any other jurisdiction -

- (i) functions corresponding to any functions of the Commission, or

- (ii) such other functions as the Committee may by regulation prescribe,

including functions in respect of the Bailiwick,

- (b) any international organisation, that is to say, any organisation, community or body -
  - (i) of which the United Kingdom or any other sovereign power is a member, or
  - (ii) which is established under any international agreement,
- (c) a self-regulatory organisation, or
- (d) a resolution authority, that is to say, a public authority that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"secondary fiduciary licence"** : see section 4,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction -

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or
- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

**"servant"** includes a person working under a contract for services and an employee,

**"shareholder controller"** -

- (a) in relation to a body, and subject to the provisions of paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) in relation to a protected cell company, means a person

who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a body (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 27(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 2 (and **"subsidiary"** has the same



meaning),

**"supervised body"** is –

- (a) a body –
  - (i) which is a licensee within the meaning of the Protection of Investors Law or which is exempt from licensing under section 44 of that Law, or
  - (ii) which holds an authorisation or registration under section 8 of that Law,
- (b) a body which is a licensee within the meaning of the Insurance Business Law,
- (c) a body which is a licensee within the meaning of the Insurance Managers and Intermediaries Law,
- (d) a body which is a licensed banking institution, or
- (e) a body which is of any other class or description prescribed for the purposes of this Law by regulations of the Committee,

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

**"telecommunications system"** means a system for the emission,

transmission, switching, conveyance or reception through the agency of electric, magnetic, electro-magnetic, electro-chemical, electro-mechanical or electro-optical energy or by optic-electronic means, of –

- (a) speech, music or other sounds,
- (b) electronic mail, data or signals,
- (c) writing or visual images or video or any combination of them,
- (d) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or
- (e) signals serving for the actuation or control of machinery or apparatus,

**"transmitted"** : see section 48(1)(iv),

**"trust"** means the legal relationship that exists (by whatever name) where a person (the **"trustee"**) holds or has vested in the trustee or is deemed to hold or have vested in the trustee any property which does not form, or which has ceased to form, part of the trustee's own estate –

- (a) for the benefit of another person, whether or not yet ascertained or in existence, or

- (b) for any purpose which is not for the benefit only of the trustee,

and the expression "**trust**" includes a trust and any equivalent or similar structure or arrangement, whether established in or under the laws of the Bailiwick or elsewhere and howsoever named,

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>II</sup>,

**"vetted supervised role"** : see section 12(2).

(2) Unless the contrary intention appears, references in the provisions of this Law to –

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) For the purposes of this Law a person who carries on any

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

activity shall be deemed to do so by way of business if that person receives any income, fee, emolument or other consideration in money or money's worth for doing so.

(4) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(5) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

(6) Subsection (5) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

**Savings and transitional provisions.**

60. (1) A person who, immediately before the commencement of this Law, was a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law, 2000 shall, on the commencement of this Law, be deemed -

(a) to be a licensed fiduciary, and

(b) to have been granted a fiduciary licence (of the corresponding category to that held under the Regulation of Fiduciaries Law, 2000),

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly.

The “**corresponding category**” in paragraph (b) means -

- (i) in the case of a full fiduciary licence category held under the Regulation of Fiduciaries Law, 2000, a primary fiduciary licence within the meaning of this Law, and
- (ii) in the case of a personal fiduciary licence held under that Law, a personal fiduciary licence within the meaning of this Law.

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Regulation of Fiduciaries Law, 2000 in respect of that person's fiduciary licence or in respect of licensed fiduciaries generally shall apply in respect of the fiduciary licence under this Law which that person is deemed to hold by virtue of this subsection.

(2) A person who before the commencement of this Law was at any time but had ceased to be a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law, 2000 shall (unless that person is for the time being a licensed fiduciary within the meaning of this Law) be deemed to be a former licensed fiduciary within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(3) A person who at any time before the commencement of this Law carried on regulated activities -

- (a) and who was exempted by the provisions of the Regulation of Fiduciaries Law, 2000 from the requirement to be licensed thereunder, or

- (b) otherwise in such circumstances specified in the provisions of that Law as not to require licensing thereunder,

in respect of such activities, but -

- (i) who is no longer carrying on regulated activities, or
- (ii) who is not exempted by the provisions of this Law from the requirement to be licensed hereunder or who may not carry on regulated activities in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

shall (unless that person is for the time being a licensed fiduciary within the meaning of this Law) be deemed to be a former licensed fiduciary within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(4) Any reference in any enactment, however expressed, to an enactment or any provision of an enactment repealed by this Law and re-enacted (with or without modification) by, or by any provision of, this Law or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the enactment, or the provision of the enactment, as re-enacted.

(5) Any reference in any enactment, however expressed, to a licensed fiduciary or a fiduciary licence within the meaning of the Regulation of Fiduciaries Law, 2000 shall be construed, after the commencement of this Law, as a reference to a licensed fiduciary or (as the case may be) a fiduciary licence within the meaning of this Law.

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

(7) Subsection (6) applies to any subordinate legislation made under a provision of an enactment repealed by this Law notwithstanding that the corresponding provision of this Law or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(8) Anything in the process of being done on the commencement of this Law under an enactment or a provision of an enactment repealed by this Law which could be done under, or under any provision of, this Law or the Enforcement Powers Law may be continued to be done after the commencement of this Law under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(9) The Committee may make regulations containing such savings and transitional provision as it thinks fit -

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of any enactment repealed by this Law which are re-enacted (with or without modification) by the provisions of this Law to the corresponding provisions of this Law.

(10) Regulations under subsection (9) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(11) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any other provision of this Law.

**Conversion of primary fiduciary licence into secondary fiduciary licence.**

61. (1) The Commission may by rules make such provision as they think fit in respect of the conversion, whether -

- (a) on the application of the licensed fiduciary, or
- (b) of the Commission's own motion and with the agreement of the licensed fiduciary,

of a primary fiduciary licence or any class or description thereof into a secondary



fiduciary licence.

(2) Where a primary fiduciary licence is converted into a secondary fiduciary licence pursuant to rules under subsection (1) -

- (a) the licensed fiduciary concerned shall be deemed -
  - (i) to have been granted a secondary fiduciary licence by the Commission under section 6, and
  - (ii) to be the holder of a secondary fiduciary licence subject to the same conditions to which the primary fiduciary licence was subject, and
- (b) the licence shall be deemed to be a secondary fiduciary licence granted by the Commission under section 6,

and the provisions of this Law shall apply accordingly.

**Repeals.**

62. The following enactments or provisions of enactments are repealed -

- (a) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>mm</sup>,

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<sup>mm</sup> Order in Council No. I of 2001.

- (b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2003<sup>nn</sup>,
- (c) section 12 of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>oo</sup>,
- (d) paragraphs 2 and 3 of Schedule 5 to the Companies (Guernsey) Law, 2008<sup>pp</sup>,
- (e) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2008<sup>qq</sup>,
- (f) in the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009<sup>rr</sup>, the entries relating to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (g) the Regulation of Fiduciaries, Administration

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<sup>nn</sup> Order in Council No. XIV of 2003.

<sup>oo</sup> Order in Council No. XVI of 2007.

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

<sup>qq</sup> Order in Council No. XXV of 2008.

<sup>rr</sup> Order in Council No. XIII of 2010.

Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2010<sup>ss</sup>,

- (h) section 50(1) of the Foundations (Guernsey) Law, 2012<sup>tt</sup>,
- (i) section 4(d) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015<sup>uu</sup>,
- (j) section 1(2)(d) of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015<sup>vv</sup>,
- (k) section 63(4) of the Single Euro Payments Area (Guernsey) Ordinance, 2016<sup>ww</sup>,
- (l) paragraph 4 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017<sup>xx</sup>,

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<sup>ss</sup> Order in Council No. XVIII of 2010.

<sup>tt</sup> Order in Council No. I of 2013.

<sup>uu</sup> Ordinance No. XII of 2015.

<sup>vv</sup> Ordinance No. XXXIX of 2015.

<sup>ww</sup> Ordinance No. II of 2016.

<sup>xx</sup> Alderney Ordinance No. III of 2017.

- (m) paragraph 4 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017<sup>yy</sup>,
- (n) paragraph 4 of the Second Schedule to the Transfer of Funds (Sark) Ordinance, 2017<sup>zz</sup>,
- (o) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008<sup>aaa</sup>,
- (p) regulation 6 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010<sup>bbb</sup>,
- (q) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Foundations Amendment) Regulations, 2013<sup>ccc</sup>,
- (r) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of

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<sup>yy</sup> Ordinance No. XXVII of 2017.

<sup>zz</sup> Sark Ordinance No. X of 2017.

<sup>aaa</sup> G.S.I. No. 3 of 2008.

<sup>bbb</sup> G.S.I. No. 83 of 2010.

<sup>ccc</sup> G.S.I. No. 4 of 2013.

Guernsey) (Pensions Amendment) Regulations,  
2017<sup>ddd</sup>,

(s) regulation 1(3) of the Financial Services Commission  
(Regulatory Laws) (Bailiwick of Guernsey)  
(Amendment) Regulations, 2017<sup>eee</sup>,

(t) paragraph 2(3) of Schedule 4 to the Beneficial  
Ownership of Legal Persons (Guernsey) Law, 2017<sup>fff</sup>.

**Citation.**

63. This Law may be cited as the Regulation of Fiduciaries, Administration  
Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

64. This Law shall come into force on the day appointed by Ordinance of  
the States; and different days may be appointed for different provisions or different  
purposes.

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<sup>ddd</sup> G.S.I. No. 34 of 2017.

<sup>eee</sup> G.S.I. No. 50 of 2017.

<sup>fff</sup> Order in Council No. VI of 2017.

SCHEDULE 1  
MINIMUM CRITERIA FOR LICENSING.

**Integrity and skill.**

1. (1) The business of the applicant or licensed fiduciary is or, in the case of a person who is not yet carrying on a regulated activity, will be carried on –

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of the activities of the applicant or licensed fiduciary, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting business, the applicant or licensed fiduciary shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensed fiduciary.

**Fit and proper persons.**

2. (1) The applicant or licensed fiduciary is a fit and proper person to hold a fiduciary licence and, in the case of a primary fiduciary licence or secondary fiduciary licence, every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed fiduciary is a fit and proper person to hold that position.

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

- (a) A's probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed fiduciary 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 fiduciary 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 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).

(3) Without prejudice to the generality of subparagraphs (1) and (2), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that that person has –

(a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,

(b) contravened any of the provisions of –

(i) this Law,

- (ii) the 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, any 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, banking, insurance, investment or other financial services, or
  - (B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons in respect of whom there has been a winding up event within the meaning of the Enforcement Powers Law),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on that person's method of conducting business or that person's suitability to carry on regulated activities, or

(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.

(4) For the purposes of this paragraph and for the avoidance of doubt -

(a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,

(b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

(c) "**enactment**" includes any primary, secondary or

tertiary legislation of any jurisdiction in the British Islands or elsewhere.

**Business to be directed by at least two individuals.**

3. (1) In the case of a primary fiduciary licence or secondary fiduciary licence, at least two individuals who are –

- (a) resident in the Bailiwick,
- (b) of appropriate standing and experience, and
- (c) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensed fiduciary.

(2) For the purposes of subparagraph (1)(c), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

**Composition of board of directors.**

4. Where the applicant or licensed fiduciary is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

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

5. (1) The applicant or licensed fiduciary conducts or, in the case of a person who is not yet carrying on a regulated activity, will conduct business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to the provisions of subparagraph (4), an applicant or licensed fiduciary ("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) in the case of a primary fiduciary licence or secondary fiduciary licence, 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, and
- (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), the Commission shall also have regard, in determining whether an applicant or licensed fiduciary is to be regarded as conducting business in a prudent manner, to the following –

- (a) in the case of a primary fiduciary licence or secondary fiduciary licence, whether the applicant or licensed fiduciary has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,
- (b) the systems of control and record keeping of the applicant or licensed fiduciary for business undertaken or contemplated and the provision made by the applicant or licensed fiduciary for the proper maintenance and development of such systems,
- (c) the complaints history of the applicant or licensed fiduciary, and
- (d) in the case of a primary fiduciary licence or secondary fiduciary licence, and where the applicant or licensed fiduciary 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 potential clients, 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 licensed fiduciary, the Commission may, to such extent as it thinks appropriate, take into account –
    - (i) the assets of the applicant or licensed fiduciary, and



- (ii) the facilities which are available to the applicant or licensed fiduciary and which are capable of providing liquidity within a reasonable period, and
- (c) subparagraph (2)(d),
  - (i) records and systems shall not be regarded as adequate unless they are such as to enable –
    - (A) the business of the applicant or licensed fiduciary to be managed prudently, and
    - (B) the applicant or licensed fiduciary to comply with the duties imposed by or under the provisions of this Law or any enactment listed in paragraph 2(2)(f), and
  - (ii) where the applicant or licensed fiduciary 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.

**Information required by the Commission.**

6. The applicant, licensed fiduciary and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed fiduciary, shall

supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

**Power to make regulations.**

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

## SCHEDULE 2

### MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

(a) that other –

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

(a) that a person cannot be appointed thereto without the exercise in that person's favour by that other company of such a power,

- (b) that a person's appointment thereto follows necessarily from that person's appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to the provisions of items (c) and (d), any shares held or power exercisable –
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for

securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

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

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

**PROJET DE LOI**

Entitled

**THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the Projet de Loi entitled "The Protection of Investors (Bailiwick of Guernsey) Law, 2020", as amended in accordance with the Resolution of the States made on the 15<sup>th</sup> July, 2020, and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

**EXPLANATORY MEMORANDUM**

This Law repeals and replaces the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ("the 1987 Law"), as amended, but with the enforcement provisions largely being transferred to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020. As well as achieving the four principal objectives described in the first policy letter directing the preparation of the legislation (see under "background" below), the revision has enabled the text of the 1987 Law to be updated and brought into alignment with the more recent regulatory Laws and in particular the Insurance Business (Bailiwick of Guernsey) Law, 2002, which was the first of the regulatory Laws to be drafted after the commencement of the Human Rights (Bailiwick of Guernsey) Law, 2000.

**Background**

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

Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, amended by Ordinance under the Ordinance-making powers set out in those two Laws.

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

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

At their meeting of 15<sup>th</sup> July, 2020, the States resolved that the version of the Projet submitted for approval at that meeting should be amended to make the text of the Projet gender neutral. In accordance with that Resolution the text has been amended and is re-presented accordingly.

# PROJET DE LOI

ENTITLED

## **The Protection of Investors (Bailiwick of Guernsey) Law, 2020**

### ARRANGEMENT OF SECTIONS

#### PART I LICENSING OF INVESTMENT BUSINESS

##### *Controlled investment business*

1. Controlled investment business.
2. Power to vary controlled investment business.

##### *Licences*

3. Application for licence.
4. Grant or refusal of licence
5. Imposition of conditions on licences.
6. Surrender of licences.

#### PART II AUTHORISATION OR REGISTRATION OF COLLECTIVE INVESTMENT SCHEMES

7. Restriction on activities in connection with collective investment schemes.
8. Authorisation or registration of collective investment schemes.
9. Imposition of conditions on authorisations or registrations.
10. Avoidance of exclusion clauses.
11. Surrender of authorisation or registration.



PART III  
CONDUCT OF CONTROLLED INVESTMENT BUSINESS

*Investment business rules*

- 12. Rules under Part III.
- 13. Rules as to applications for and grant of licences, etc.
- 14. Accounting and financial rules.
- 15. Conduct of business rules.
- 16. Power to adapt rules, codes and guidance, etc, under this Law.
- 17. Promotion rules.
- 18. Indemnity and compensation rules.
- 19. Authorised or registered collective investment scheme rules.
- 20. Rules as to notification of ancillary vehicles.
- 21. Rules as to declarations of status of schemes, investments, etc.

*Investment business regulations*

- 22. Regulations under Part III.
- 23. Fees regulations and recovery of fees.
- 24. Regulations limiting validity of licences, authorisations or registrations.
- 25. Exemption regulations.
- 26. Unsolicited calls regulations.
- 27. Cancellation regulations.

*Codes and guidance*

- 28. Power to issue codes of practice and guidance.

*Principles of conduct*

- 29. Principles of conduct for licensees.

*Directions*

- 30. Power to issue directions.

*Information as to licensees  
and collective investment schemes*

- 31. List of, and information as to, licensees and authorised and registered schemes.

*Powers to obtain information*

- 32. Persons to whom section 33 applies.
- 33. Power to require information and production of documents etc.
- 34. Falsification, etc, of documents during investigation.
- 35. Communications by auditors, etc, to Commission.
- 36. Power to request meetings with auditors, actuaries, etc.
- 37. Retention of documents.

*Skilled persons*

- 38. Appointment of skilled persons.

*Supervised roles*

- 39. Supervised roles.

*Notification of holding of vetted and approved supervised roles, etc  
and acquisition of voting power*

- 40. Notification of and objection to holders of vetted supervised roles.
- 41. Notification of and objection to holders of approved supervised roles.
- 42. Notification of change of holder of supervised role.

*Auditors*

- 43. Appointment of auditors.

PART IV  
EXEMPT AND UNLICENSED PERSONS

- 44. Exempt persons.
- 45. Power to extend other requirements.

PART V  
MISCELLANEOUS AND SUPPLEMENTARY

*Civil proceedings*

- 46. Agreements made by or through persons in breach of section 1.
- 47. Actions for damages.

*Disclosure of information*

- 48. Restrictions on disclosure of information.
- 49. Cases where disclosure is permitted.
- 50. Information supplied to Commission by relevant supervisory authority.
- 51. Royal Court to take Commission's undertakings into account.

*Annual return*

- 52. Annual return of licensee and authorised or registered collective investment scheme.

*Information and educational material*

- 53. Publication of information and material as to controlled investments, etc.

*Representations, notice of decisions  
and appeals*

- 54. Representations concerning proposed decisions of Commission.
- 55. Notice of decisions of Commission.
- 56. Disclosure of reasons for decisions of Commission.
- 57. Appeals to Royal Court against decisions of Commission.
- 58. Appeals from Royal Court to Court of Appeal.
- 59. Restriction on successive challenges.

*Power to exclude liability*

- 60. Power to exclude liability.

*Matters Commission must have regard to*

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

*Criminal proceedings*

- 62. Penalties.
- 63. Criminal proceedings against unincorporated bodies.
- 64. Criminal liability of directors etc.
- 65. Defence of due diligence.
- 66. Jurisdiction.

*Supplementary*

- 67. Service of notices and documents.
- 68. Power of States to amend Law by Ordinance.
- 69. Power to implement EU measures on markets in financial instruments.
- 70. Power to make Ordinances in respect of credit rating agencies.
- 71. Ordinances, regulations, rules, codes and guidance, etc - general.
- 72. Regulations: consultation with Committees and Commission and laying before the States.
- 73. Publication of regulations, rules, codes and guidance, etc.
- 74. Making and effect of contravention of rules.
- 75. Regulations and rules are statutory instruments.
- 76. Documents to be submitted in electronic form and by electronic means.
- 77. Verification of information.
- 78. Evidence.
- 79. Interpretation.
- 80. Repeals.
- 81. Savings and transitional provisions.
- 82. Citation.
- 83. Commencement.

## SCHEDULES

- Schedule 1: Controlled investments.
- Schedule 2: Restricted activities.
- Schedule 3: Requirements for authorised or registered collective investment schemes.
- Schedule 4: Minimum criteria for licensing.
- Schedule 5: Meaning of "holding company" and "subsidiary company".

# PROJET DE LOI

ENTITLED

## **The Protection of Investors (Bailiwick of Guernsey) Law, 2020**

**THE STATES**, in pursuance of their Resolutions of the 30<sup>th</sup> October, 2015<sup>a</sup> and the 27<sup>th</sup> November, 2015<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### LICENSING OF INVESTMENT BUSINESS

##### *Controlled investment business*

##### **Controlled investment business.**

1. (1) Subject to the provisions of this Law, persons shall not carry on, or hold themselves out as carrying on, controlled investment business in or from within the Bailiwick, except under the authority of and in accordance with the conditions of a licence.

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

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

(2) Subject to the provisions of this Law, a Bailiwick body shall not carry on, or hold itself out as carrying on, any controlled investment business in or from within a jurisdiction outside the Bailiwick, unless -

(a) it is licensed under the provisions of this Law to carry on that business -

(i) in the Bailiwick, and

(ii) in that jurisdiction, and

(b) that business would be lawfully carried on by that body if it were carried on by it in the Bailiwick.

(3) For the purposes of this Law -

(a) persons carry on controlled investment business if, by way of business, they engage in a restricted activity in connection with a controlled investment,

(b) an investment of any of the categories identified and described in Schedule 1 constitutes a "**controlled investment**", and

(c) any activity identified and described in Schedule 2 constitutes a "**restricted activity**" when carried on in connection with a controlled investment.

(4) Persons who carry on, or hold themselves out as carrying on, a restricted activity in contravention of this section are guilty of an offence.

**Power to vary controlled investment business.**

2. (1) The Committee may by regulation amend Schedule 1 or Schedule 2 so as to -

- (a) include in or delete from Schedule 1 any identification and description of any category of controlled investment,
- (b) include in or delete from Schedule 2 any identification and description of any activity constituting a restricted activity,
- (c) vary the description of any category of controlled investment identified in Schedule 1, or
- (d) vary the description of any restricted activity identified in Schedule 2.

(2) The Committee may by regulation provide that all of the activities identified in Schedule 2, or only such of those activities as are specified in the Ordinance, constitute restricted activities when carried on in connection with any specified category of controlled investment identified and described in Schedule 1 or in connection with any specified description of controlled investment within any such category.

*Licences*

**Application for licence.**

3. (1) An application for a licence to carry on controlled investment business shall -

- (a) be made to the Commission in such form and manner as, subject to the provisions of any rules made under section 13, the Commission may require,
- (b) describe the restricted activity proposed to be carried on,
- (c) identify the category of controlled investment in connection with which the restricted activity is proposed to be carried on,
- (d) if the applicant proposes to carry on controlled investment business in, or from within, Alderney or Sark, contain a statement identifying the Island in which, or from within which, the applicant intends to carry on that business,
- (e) contain an address for the service on the applicant of any document required or authorised to be served on the applicant under the provisions of this Law, which address -
  - (i) if the applicant proposes to carry on business exclusively in, or from within, Alderney or Sark,



shall be an address in Alderney or Sark, as the case may be, or

(ii) in any other case, shall be an address in Guernsey,

(f) contain or be accompanied by such other particulars, and such information or documents, as the Commission may require, and

(g) be accompanied by such fee as may be prescribed by regulations under section 23.

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

(3) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (2) -

(a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information, statement or other document as the Commission may

specify,

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

(4) The Commission's requirements under subsections (1), (2) and (3) may differ as between different applications.

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

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

(a) the applicant has failed for -

- (i) a period of three months, or
- (ii) such longer period as the Commission may have specified by notice in writing to the applicant,

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

(b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to

provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

- (c) a period of 14 days has expired following the giving of that notice,
- (d) that notice has not, within that period of 14 days, been withdrawn by the Commission, and
- (e) 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.

(7) Before deciding whether or not to grant a licence the Commission shall, if the application contains a statement under subsection (1)(d) to the effect that the applicant proposes to carry on controlled investment business in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(8) If at any time a licensee proposes to carry on controlled investment business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (7).

**Grant or refusal of licence.**

4. (1) On an application for a licence being made to it under and in accordance with the provisions of section 3 the Commission may -

- (a) subject to the provisions of subsection (3), grant the application and issue a licence to the applicant, or
- (b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a licence unless satisfied that the criteria specified in Schedule 4 (the “**minimum criteria for licensing**”) are fulfilled -

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

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

- (a) the provisions of any code or guidance issued under section 28 of this Law or section 57 or 120 of the Enforcement Powers Law, and

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

(4) The Commission may refuse an application for a licence which is not accompanied by the fee prescribed by regulations under section 23 or which is otherwise not made in accordance with the provisions of this Law.

**Imposition of conditions on licences.**

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

(2) Such conditions may apply to licensees generally, to any class or description of licensee or to any particular licensee.

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

(4) Without prejudice to the generality of subsection (1), a condition imposed under this section may –

- (a) prohibit a licensee from –
  - (i) entering into transactions of any specified description or in specified circumstances or to a specified extent,

- (ii) soliciting business in a specified place, or from persons of a specified description, or otherwise than from such persons,
  - (iii) carrying on business in a specified manner or otherwise than in a specified manner,
  - (iv) carrying on business in or from within, or otherwise than in or from within, a specified Island in the Bailiwick,
  - (v) disposing of, or otherwise dealing with, any, or any specified, assets, in any specified manner or otherwise than in a specified manner,
- (b) require a licensee to take all necessary steps to transfer to a trustee, custodian, licensee, 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 description, which –
- (i) belong to the licensee, or
  - (ii) are held by or to the order of the licensee and either belong to investors or clients or belong to –
- (A) an investment company the shares in which belong to investors or clients, or

- (B) some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by investors or clients,
- (c) require a licensee to maintain in the Bailiwick assets of such value and of such description as appear to the Commission to be necessary or desirable with a view to ensuring that the licensee will be able to meet the liabilities in respect of the business carried on by the licensee,
- (d) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the licensee,
- (e) prohibit, restrict or impose limitations on the carrying on of controlled investment business, or any class or description of controlled investment business, in or from within any place, or any particular place, outside the Bailiwick -
  - (i) by the licensee itself,
  - (ii) by any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or

- (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).

(5) A licensee which contravenes any condition of a licence is guilty of an offence.

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

(7) A licensee whose licence is subject to a condition as to its duration may apply under section 3 for a new licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 4 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.

#### **Surrender of licences.**

6. (1) A licensee may surrender its licence by notice in writing served



upon the Commission.

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

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

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 57, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

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

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

- (a) if, in the opinion of the Commission, the liabilities of the licensee have not been discharged or transferred,

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

(7) Upon the surrender of a licence no fee paid or payable by the licensee concerned pursuant to regulations under section 23 shall be refunded, remitted, reduced or waived.

## PART II

### AUTHORISATION OR REGISTRATION OF COLLECTIVE INVESTMENT SCHEMES

#### **Restriction on activities in connection with collective investment schemes.**

7. Subject to the provisions of section 44, a licensee shall not engage by way of business in any restricted activity in connection with a collective investment scheme unless –

- (a) the scheme is an authorised or registered collective investment scheme of a specified class, and
- (b) he carries on that activity in accordance with –
  - (i) any conditions imposed under section 9 in respect of that scheme, and

- (ii) any rules and regulations applicable to any authorised or registered collective investment scheme of that class.

**Authorisation or registration of collective investment schemes.**

8. (1) A collective investment scheme may be declared by the Commission to be an authorised or registered collective investment scheme of a specified class or a collective investment scheme of such other classification as the States may specify by Ordinance.

(2) An Ordinance under subsection (1) may provide that the provisions of this Law and of any other enactment apply in respect of collective investment schemes of a classification specified by such an Ordinance as they apply in respect of authorised or registered collective investment schemes, subject to such exceptions, adaptations and modifications as may be so specified; and in this subsection “**enactment**” means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(3) A person seeking a declaration that a scheme is an authorised or registered collective investment scheme shall –

- (a) make application to the Commission in such form and manner as, subject to the provisions of any rules made under section 13, the Commission may require containing or accompanied by such particulars, information or documents as, subject to the provisions of any such rules, the Commission may require, and accompanied by such fee as may be prescribed by

regulations under section 23, and

- (b) pending determination of the application, furnish the Commission with such further information or documents about the scheme concerned as, subject to the provisions of any such rules, the Commission may require.

(4) On an application being made to it under and in accordance with this section the Commission may –

- (a) if it appears to the Commission that the scheme satisfies the requirements referred to in subsection (5), grant the application and issue –

- (i) in the case of an application for authorisation, an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class,

- (ii) in the case of an application for registration, a registration declaring that the scheme is a registered collective investment scheme of a specified class, or

- (b) refuse the application.

(5) The requirements for an authorised or registered collective investment scheme are set out in the provisions of Schedule 3.

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

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

(a) the applicant has failed for -

(i) a period of three months, or

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

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

(b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

(c) a period of 14 days has expired following the giving of that notice,

(d) that notice has not, within that period of 14 days, been withdrawn by the Commission, and

- (e) 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.
- (8) An authorisation or registration under this section shall state –
  - (a) the name of the authorised or registered collective investment scheme,
  - (b) the specified class of authorised or registered collective investment scheme which the scheme is declared to be.

**Imposition of conditions on authorisations or registrations.**

9. (1) The Commission may, when issuing an authorisation or registration of a collective investment scheme under section 8 or at any time thereafter, by notice in writing served on the designated administrator of the scheme, impose such conditions in respect of the authorisation or registration as it thinks fit.

(2) Such conditions may apply to authorised or registered collective investment schemes generally, to any class or description of authorised or registered collective investment scheme or to any particular authorised or registered collective investment scheme.

(3) The Commission may, by notice in writing served on the designated administrator of an authorised or registered collective investment scheme, vary or rescind any condition in respect of the authorisation or registration.

(4) Without prejudice to the generality of subsection (1), a condition imposed under this section in relation to an authorised or registered collective investment scheme may prohibit or restrict the promotion of the scheme –

- (a) to the public in the Bailiwick, or
- (b) from within the Bailiwick to the public in any specified jurisdiction, or elsewhere than in any specified jurisdiction.

(5) Where there is a contravention of any condition of the authorisation or registration of a collective investment scheme –

- (a) where the authorised or registered collective investment scheme is a person, it is guilty of an offence, and
- (b) where the authorised or registered collective investment scheme is not a person, and without prejudice to the provisions of sections 63 and 64, the officers of the scheme are guilty of an offence.

(6) The contravention of a condition of an authorisation or registration of a collective investment scheme is, whether or not constituting an offence under subsection (5), a ground for the suspension or revocation of the authorisation or registration (see section 30 of the Enforcement Powers Law) but does

not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) An authorised or registered collective investment scheme whose authorisation or registration is subject to a condition as to its duration may apply under section 8 for a new authorisation or registration and, if that authorisation or registration is granted, the first-mentioned authorisation or registration shall cease to have effect.

**Avoidance of exclusion clauses.**

10. Any provision of an authorised or registered collective investment scheme which would have the effect of exempting any person carrying on a restricted activity in relation to the scheme from liability for failure to exercise due care and diligence in the performance of that person's functions in respect of the scheme, is void to that extent.

**Surrender of authorisation or registration.**

11. (1) The designated administrator or the designated trustee or custodian of an authorised or registered collective investment scheme may surrender the scheme's authorisation or registration by notice in writing served upon the Commission.

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



(3) The surrender of an authorisation or registration shall, subject to the provisions of subsection (5), be irrevocable unless it is expressed to take effect on a particular date and before that date the Commission by notice in writing to the designated administrator or the designated trustee or custodian of the scheme, upon the written application of the designated administrator or the designated trustee or custodian, allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of an authorisation or registration to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 57, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of an authorisation or registration is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of an authorisation or registration -

- (a) if, in the opinion of the Commission, the liabilities of the scheme have not been discharged or transferred,
- (b) if the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or

- (c) if the name of the scheme would not, immediately after the surrender, comply with the provisions of Schedule 3.

(7) Upon the surrender of a scheme's authorisation or registration no fee paid or payable by or in respect of the scheme or the authorisation or registration pursuant to regulations under section 23 shall be refunded, remitted, reduced or waived.

### PART III

#### CONDUCT OF CONTROLLED INVESTMENT BUSINESS

##### *Investment business rules*

#### **Rules under Part III.**

12. (1) The Commission may make rules in relation to the carrying on of controlled investment business by licensees and in relation to authorised or registered collective investment schemes.

(2) Without prejudice to the generality of subsection (1), rules may make provision in respect of any of the matters referred to in sections 13 to 21 inclusive.

(3) Rules may –

- (a) apply to both authorised and registered collective investment schemes or to either of such schemes, to all controlled investments or to any category or description of controlled investments, or to all restricted activities or

to any description of restricted activities,

- (b) set out general conditions applicable to all licences, to specified classes of licences, to licences issued to specified classes of persons, to licences issued in respect of specified restricted activities or to licences issued for the carrying on of restricted activities in connection with specified categories or descriptions of controlled investments,
- (c) make different provision in respect of the different cases mentioned in paragraphs (a) and (b) of this subsection, in respect of different circumstances within those cases and in respect of different circumstances generally,
- (d) exempt from compliance with the rules, either unconditionally or subject to specified conditions, such classes or descriptions of restricted activities, controlled investments or licensees as may be specified, in such circumstances as may be specified.

**Rules as to applications for and grant of licences, etc.**

13. (1) Rules may make any provision not inconsistent with the provisions of this Law governing applications for, and the issue and validity of, licences, authorisations and registrations and other relevant documents.

- (2) Without prejudice to the generality of subsection (1), rules may

—

- (a) prescribe the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,
- (b) prescribe the form and content of relevant documents,
- (c) make provision as to the renewal of relevant documents the period of validity of which is limited by virtue of any regulations made under section 24 or otherwise,
- (d) prescribe minimum requirements (as to capital, solvency, management, staff, resources and otherwise) to be attained by an applicant for a relevant document.

(3) In this section "**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.

**Accounting and financial rules.**

14. (1) Rules may make provision as to the financial conduct of controlled investment business.

(2) Without prejudice to the generality of subsection (1), rules may make provision as to –

- (a) the manner in which money paid to a licensee in specified circumstances is to be held, dealt with and accounted for by the licensee,
- (b) the preparation, keeping, form, content, maintenance, submission to the Commission and publication of accounts, reports and other records,
- (c) the separation of funds attributable to different categories of controlled investments and to different descriptions of investments within each category, the maintenance of accounts and records in relation to those funds and the manner in which they are to be dealt with,
- (d) subject to the provisions of section 43, the appointment, removal, powers and duties of an auditor to audit accounts relating to controlled investment business and the manner in which those accounts are to be audited.

**Conduct of business rules.**

15. (1) Rules may make provision in relation to controlled investment business and the carrying on thereof by licensees and generally as to the conduct of, and the manner in which licensees conduct, or hold themselves out as conducting, their business.

- (2) Without prejudice to the generality of subsection (1), rules may

—

- (a) prohibit licensees from carrying on, or holding themselves out as carrying on, restricted activities –
  - (i) in connection with controlled investments of any specified category or description,
  - (ii) in connection with controlled investments of a category or description, or 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 description or persons other than those of a specified description,
- (b) prescribe the manner in which licensees must conduct, govern, manage and operate their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of investor or client assets, financial resources, the calculation of technical provisions and capital requirements),
- (c) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensees of any discretionary powers afforded to them by an investor or client,
- (d) require licensees to employ persons of specified

descriptions, and to have at their disposal specified resources, in connection with the carrying on of any restricted activity, and specify the powers and duties of persons so employed,

(e) control the relationship between licensees and their servants and agents and, without prejudice to the generality of the foregoing -

(i) require licensees to impose and enforce restrictions on the activities carried on by their servants and agents,

(ii) enable or require information obtained in the course of carrying on any description of the controlled investment business of a licensee to be withheld from persons involved in carrying on any other description of the controlled investment business of that licensee,

(f) regulate or prohibit the carrying on of any other business in conjunction with any description of controlled investment business,

(g) require specified information to be given in the form and manner and at the time specified -

(i) to the Commission,

- (ii) to the public,
  - (iii) to any specified classes or descriptions of persons,
  - (iv) without prejudice to any regulations made under section 27(b), to any person whom a licensee invites to take any step with a view to acquiring a controlled investment, or
  - (v) to any person whom a licensee advises as to the exercise of any right conferred by a controlled investment,
- 
- (h) without prejudice to any rules made under section 18, require licensees to make provision for the protection of investors in the event of the cessation of any controlled investment business carried on by them,
  - (i) 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,
  - (j) make provision as to the settlement of disputes.

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

16. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or 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, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular controlled investment 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 licensee or applicant having regard to the benefit which compliance would confer on investors, and
- (b) the exercise of those powers will not result in any undue risk to investors.

(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).

**Promotion rules.**

17. (1) Rules may prohibit, restrict or control the promotion of any controlled investment by any person, whether by means of prospectuses, advertisements, invitations or otherwise.

(2) Without prejudice to the generality of subsection (1), rules may

–

- (a) make provision as to prospectuses, and in particular –
  - (i) specify circumstances in which a prospectus must be issued, and prohibit or restrict the promotion of any specified category or description of controlled investment by any other means unless a prospectus has been issued in accordance with the rules,
  - (ii) prohibit, restrict or control the issue of prospectuses in relation to any specified description of controlled investment business,
  - (iii) impose requirements as to the form and content of prospectuses, including requirements as to their submission to, and authorisation by, the Commission,
  - (iv) make special provision concerning the submission to the Commission, and the publication, of updated information concerning the controlled investments to which a prospectus relates, and of corrections to and changes in that information, including special provision as to the payment of compensation to investors who suffer loss as a result of any omission from, or misleading statement in, any such prospectus or information,

- (b) prohibit licensees or any other person from promoting any category or description of controlled investment to the public,
- (c) restrict the circumstances and manner in which a licensee or any other person may promote any category or description of controlled investment to the public or to any description of persons.

**Indemnity and compensation rules.**

18. (1) Rules may provide for indemnity against any claim, or compensation for loss arising from inability to meet any claim, in respect of any description of civil liability incurred by a licensee in connection with the licensee's controlled investment business.

(2) For the purpose of providing for indemnity or compensation, rules under this section may –

- (a) authorise the Commission to establish, maintain and administer a fund or funds, or specify circumstances in which the Commission may do so,
- (b) authorise the Commission to take out and maintain insurance with a licensed insurer,
- (c) require any person to whom the rules apply to take out and maintain insurance with a licensed insurer.

(3) Without prejudice to the generality of subsections (1) and (2), rules under this section may –

- (a) specify the terms and conditions on which, and the extent to which, indemnity or compensation is to be available and any circumstances in which the right to it is to be excluded or modified,
- (b) provide for the management, administration and protection of any fund or funds maintained by virtue of rules under subsection (2)(a) and require licensees to make payments to any such fund, or specify the circumstances in which, and the terms upon which, the Commission may by notice in writing require them to make such payments,
- (c) require licensees to make payments by way of premium on any insurance policy maintained by the Commission by virtue of rules under subsection (2)(b),
- (d) prescribe the conditions which an insurance policy must satisfy for the purposes of rules under subsection (2)(c),
- (e) authorise the Commission to determine the amount which the rules require to be paid to the Commission or an insurer, subject to such limits or in accordance with such provisions as may be specified in the rules,

- (f) specify circumstances in which, where sums are paid by the Commission or an insurer in satisfaction of claims against a licensee, proceedings may be taken against that licensee by the Commission or the insurer,
- (g) empower the Commission to take such steps as the Commission considers necessary or expedient to ascertain whether or not the rules are being complied with.

**Authorised or registered collective investment scheme rules.**

19. (1) Rules may, subject to the provisions of sections 7, 8 and 9, and without prejudice to the provisions of any other rules, or to the provisions of any regulations (which, unless those rules or regulations otherwise specify or the contrary intention appears, apply to authorised or registered collective investment schemes as they apply to any other category of controlled investment) make provision as to the constitution, conduct and dissolution of authorised or registered collective investment schemes, the functions of their designated administrators, the rights of investors in such schemes and, in the case of authorised and registered open-ended collective investment schemes, the functions of their designated trustees and custodians.

(2) Rules may specify (by the use of a number, a letter, a title or otherwise) different classes of authorised or registered collective investment schemes for the purposes of this Law; and, without prejudice to section 12(3), any rules such as are described in subsection (3) of this section may apply to, and make different provision in relation to, schemes falling within each class so specified.

(3) Without prejudice to the generality of subsection (1), rules may

—

- (a) impose requirements, not inconsistent with the provisions of Schedule 3, as to the contents of the trust deed, memorandum, articles of incorporation or other instrument constituting an authorised or registered collective investment scheme, including rules incorporating into any such instrument provisions overriding its express terms and, without prejudice to section 10, rendering the latter void to the extent of any inconsistency with any provision so incorporated,
- (b) regulate the issue and redemption of units in such schemes,
- (c) make provision as to the expenses of such schemes and the means of meeting those expenses,
- (d) restrict or regulate the investment and borrowing powers exercisable in relation to such schemes,
- (e) regulate or prohibit the carrying on of any other business or activity, or of any other description of business or activity, by the designated administrators of such schemes,
- (f) impose restrictions on the extent to which, and requirements (including requirements to obtain the authorisation of the Commission and as to the publication of proposals) as to the manner in which –

- (i) an amendment may be made to the terms of such a scheme, or
- (ii) a person carrying on any specified restricted activity in connection with such a scheme may be replaced.

**Rules as to notification of ancillary vehicles.**

20. (1) Rules may make provision in respect of the notification to the Commission of ancillary vehicles or any activity in respect thereof.

(2) Rules under subsection (1) may, without limitation, provide that -

- (a) notifications shall be made in such form and manner, and shall be accompanied by such information and documents, as the rules may specify or as the Commission may require,
- (b) notifications shall be accompanied by such fee as may be prescribed by regulations under section 23 (and section 23 shall have effect accordingly),
- (c) the Commission may at any time after receipt of notification require the person giving the notification and other persons described in the rules to furnish such additional information and documents as it may consider necessary or desirable,

- (d) notifications shall be valid for such period as may be specified in the rules or as the Commission may determine,
- (e) if, whether before or after the giving of notification, 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 person giving the notification (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), 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 rules may provide),
- (f) a failure to comply with any requirement arising by virtue of paragraph (e) may, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, be taken into account by the Commission for the purpose of the performance of its functions,
- (g) an ancillary vehicle, or activity in respect of an ancillary vehicle, when notified in accordance with the provisions of the rules, is, subject to the provisions of the rules, by virtue of section 3(1)(aa) of the Regulation of Fiduciaries Law exempt from the operation of section 1 of that Law



and accordingly not subject to licensing under the provisions of that Law.

(3) In this section an "**ancillary vehicle**" means a body, entity or arrangement -

(a) which is ancillary to a controlled investment or to the carrying on of a regulated activity within the meaning of this Law,

(b) which, or the carrying on of which, is not required to be licensed, authorised or registered under the provisions of this Law, and

(c) which, or any activity in respect of which, is -

(i) a regulated activity within the meaning of the Regulation of Fiduciaries Law, and

(ii) required to be licensed under that Law or exempted by the provisions of that Law from the requirement to be licensed thereunder.

(4) The Committee may by regulation amend the meaning of "ancillary vehicle".

**Rules as to declarations of status of schemes, investments, etc.**

21. (1) The Commission may make such rules as it think fit as to the making of declarations by the Commission -

- (a) that a particular activity -
  - (i) is or is not a restricted activity, or
  - (ii) would or would not be a restricted activity if carried on in connection with a controlled investment,
- (b) that a particular investment is or is not -
  - (i) a controlled investment, or
  - (ii) a controlled investment of a particular category,
- (c) that a particular scheme, arrangement, security or other investment is or is not a collective investment scheme or a general security or derivative for the purposes of Schedule 1,
- (d) as to any other matter specified by the rules as being a matter in respect of which a declaration may be made by the Commission under or for the purposes of the rules.

(2) Rules under this section may, without limitation, make provision in respect of -

- (a) the making of applications for -

- (i) declarations referred to in subsection (1), and
  - (ii) the variation, renewal or surrender thereof,
- (b) the granting or refusal of applications,
- (c) the form and manner of applications and the information and documents which must accompany them,
- (d) the period of validity of declarations,
- (e) the revocation, variation, renewal or surrender of declarations,
- (f) the provision of information and documents from persons holding declarations and other persons described in the rules,
- (g) requirements to inform the Commission if, whether before or after the grant of a declaration, 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 declaration was granted for the purposes of the application or declaration (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise),

- (h) failure to comply with any requirement arising by virtue of paragraph (f), including, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, provision that the failure is a ground for the refusal or revocation of the declaration,
- (i) the attachment of such conditions as the rules may specify or as the Commission may think fit, whether at the time of granting or renewing a declaration or otherwise, and the removal or modification of conditions previously attached,
- (j) appeals,
- (k) the payment of such fee as may be prescribed by regulations under section 23 in respect of applications mentioned in paragraph (a) and the granting, variation, renewal or surrender of declarations or otherwise for the purposes of the rules (and section 23 shall have effect accordingly).

*Investment business regulations*

**Regulations under Part III.**

22. (1) The Committee may make regulations concerning controlled investment business.

(2) Without prejudice to the generality of subsection (1), regulations may make provisions in respect of any of the matters referred to in sections 23 to 27 inclusive.

(3) Regulations may, without prejudice to the generality of section 71 –

- (a) apply to all controlled investments or to any category or description of controlled investments, or to all restricted activities or to any description of restricted activities,
- (b) prescribe general conditions applicable to all licences, to prescribed classes of licences, to licences issued to prescribed classes of persons, to licences issued in respect of prescribed restricted activities or to licences issued for the carrying on of restricted activities in connection with prescribed categories or descriptions of controlled investments,
- (c) make different provision in respect of the different cases mentioned in paragraphs (a) and (b) of this subsection, in respect of different circumstances within those cases and in respect of different circumstances generally,
- (d) exempt from compliance with the regulations, either unconditionally or subject to prescribed conditions, such categories or descriptions of restricted activities, controlled investments or licensees as may be prescribed, in such circumstances as may be prescribed,

and in this subsection “**prescribed**” means prescribed by the regulations.

**Fees regulations and recovery of fees.**

23. (1) Regulations may 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, authorisations or registrations,
- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification under the provisions of or for the purposes of this Law,
- (c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,
- (d) any other matters in respect of -
  - (i) licensees or licences, or

- (ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes.

(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 licensee by or in respect of whom, or in respect of whose licence or business, the fee or interest is payable,

(iii) the collective investment scheme in respect of which, or in respect of the authorisation or registration of which, the fee or interest is payable or, if the scheme is not a legal or natural



person, the designated administrator thereof, or

- (iv) 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 sections 22 and 71, regulations under this section may make different provision in respect of -

- (a) different categories, classes or descriptions of –
  - (i) licensee or licence,
  - (ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes, or
  - (iii) controlled investment business, or

- (b) the same categories, classes or descriptions of –
    - (i) licensee or licence,
    - (ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes, or
    - (iii) controlled investment 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.

**Regulations limiting validity of licences, authorisations or registrations.**

24. Regulations may limit the period of validity of licences issued under section 4 or imposed under section 31 of the Enforcement Powers Law, authorisations or registrations issued under section 8 or other relevant documents within the meaning of section 13(3).

**Exemption regulations.**

25. Regulations may –

- (a) prescribe circumstances in which dealing in a controlled investment by a person as –

- (i) a principal,
- (ii) a trustee for another person, or
- (iii) a personal representative of a deceased person,

shall be deemed not to constitute the carrying on of controlled investment business by the first-mentioned person,

- (b) prescribe circumstances in which the issue by a person of an advertisement in connection with a controlled investment shall be deemed not to constitute the carrying on of controlled investment business by that person.

**Unsolicited calls regulations.**

26. (1) Regulations may prohibit any person from entering into any, or any description of, controlled investment agreement with an investor in the course of, or in consequence of, a personal visit or oral communication made without express invitation.

(2) Regulations under this section may provide that, subject to such exceptions, adaptations and modifications as the regulations may prescribe, section 46 is to apply in relation to any agreement entered into in contravention of the regulations as that section applies in relation to an agreement entered into in contravention of section 1 or in consequence of such a contravention.

**Cancellation regulations.**

27. Regulations may, without prejudice to section 46 or to any regulations making such provision as is referred to in section 26(2) -

- (a) enable an investor, or a person who has agreed to become an investor, to rescind a controlled investment agreement, or to withdraw an offer to enter into a controlled investment agreement, within such period and in such manner as may be prescribed by the regulations,
- (b) require information prescribed by the regulations to be given, in such form and manner and at such time as may be so prescribed, as to any such right of rescission or withdrawal,
- (c) provide for the restitution of property and the making and recovery of payments where any such right of rescission or withdrawal is exercised.

*Codes and guidance*

**Power to issue codes of practice and guidance.**

28. (1) The Commission, after consultation with -
- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and
  - (b) such other persons as appear to the Commission to be

appropriate,

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

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

(A) persons carrying on or engaged in controlled investment business or other activities in respect of authorised or registered collective investment schemes, other controlled investments or ancillary vehicles, or

(B) any other persons to whom the code or guidance applies,

(ii) generally for the purpose of providing clarification or guidance in respect of the

provisions of or for the purposes of, or in connection with the administration, implementation or enforcement of, this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules or regulations may be made under sections 12 to 27.

(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 is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any

question arising in the proceedings then the provision may be taken into account in determining that question.

### *Principles of conduct*

#### **Principles of conduct for licensees.**

29. (1) A licensee 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 controlled investment business in relation to which it is acting as licensee, which ought reasonably to be disclosed to the Commission.

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

### *Directions*

#### **Power to issue directions.**

30. (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) an authorised or registered collective investment

scheme,

(c) subject to the provisions of subsection (5), a former licensee or former authorised or registered collective investment scheme,

(d) a person carrying on controlled investment 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,

(e) 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 (d),

(f) a person who is the holder of a supervised role in respect of, or is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,



- (g) 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,
- (h) an ancillary vehicle of a person or entity specified in any other paragraph of this subsection, 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.

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

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

- (a) require the directed person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) prohibit or impose limitations on the acceptance or carrying on of controlled investment business and other business, or on the acceptance or repayment of deposits

or investor or client monies, the granting of credit or the making of investments,

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

(i) by the directed person,

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

(iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),

(d) prohibit the directed person from soliciting (whether at all or in any specified manner) controlled investment business and other business, either generally or from specified persons or classes or descriptions of persons,

(e) prohibit the directed person from entering into any other transaction or class or description of transactions,

- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,
- (g) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,
- (h) specify requirements to be fulfilled otherwise than by action taken by the directed person,
- (i) 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,
- (j) require the directed person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensee, 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,

licensee, 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>c</sup>), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission,

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

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

(k) where the directed person is a licensee, and without prejudice to paragraph (j), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensee, 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 investors or clients or belong to -

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

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

(l) 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,

(m) 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, or the directed person has given notice in writing to the Commission surrendering its licence under section 6 of this Law, require that person to take all reasonable steps to procure the transfer of all or any of its investors or clients to another licensee acceptable to the Commission,

(n) 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),

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

(5) A direction may be imposed on a former licensee or former authorised or registered collective investment scheme only within a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be), 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, a direction imposed on a former licensee or former authorised or registered collective investment scheme within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

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

currently a directed person of that class or description, but only for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary 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 or former authorised or registered collective investment scheme.

(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, or
- (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, authorised or registered collective investment scheme 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, authorisation or registration, 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 this section is guilty of an offence.

(9) Where the directed person is a licensee or an authorised or registered collective investment scheme, 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, authorisation or registration held by the directed person (see sections 28, 29 and 30 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 4 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.

*Information as to licensees  
and collective investment schemes*

**List of, and information as to, licensees and authorised and registered schemes.**

31. (1) The Commission shall -

- (a) establish and maintain, in such form as the Commission may determine, a list of -

- (i) licensees, and

- (ii) authorised and registered collective investment schemes,

- (b) 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 that list, and

- (c) publish the list on the Commission's official website and in such other manner (if any) as the Commission thinks fit.

(2) The list maintained under subsection (1) shall contain, in relation to each licensee and authorised or registered collective investment scheme -

- (a) the name of the licensee or scheme,
- (b) in the case of a licensee, the restricted activity identified and described in Schedule 2 in respect of which the licence was granted,
- (c) in the case of a scheme, the category of controlled investment identified and described in Schedule 1 in respect of which the authorisation or registration was granted,
- (d) the addresses or principal places of business of the licensee or scheme in the Bailiwick,
- (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, authorisation or registration,
  - (ii) any directions given to the licensee or scheme, or
  - (iii) any enforcement requirements imposed on the licensee or scheme or any other person in connection with the licence, authorisation or registration, and

- (f) such other particulars as the Commission may determine.

(3) The Commission shall publish the fact that a particular person or collective investment scheme -

- (a) has ceased to hold a licence, authorisation or registration, as the case may be, whether by virtue of the revocation, surrender or expiry of the licence, authorisation or registration or otherwise, or
- (b) has had its licence, authorisation or registration suspended.

(4) The Commission may also publish the fact that a particular person or collective investment scheme -

- (a) has been granted or refused a licence, authorisation or registration, or
- (b) is not or has not been a licensee or authorised or registered collective investment scheme.

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

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

expiry of a licence, authorisation or registration,  
or

(ii) any change in relation to a licensee or authorised  
or registered collective investment scheme, or

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

that the list maintained under subsection (1) or any particular contained in an entry in that list is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(6) 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.

*Powers to obtain information*

**Persons to whom section 33 applies.**

32. (1) In section 33 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

(a) a licensee,

(b) an authorised or registered collective investment  
scheme,

(c) an applicant for -

- (i) a licence, or
  - (ii) a declaration that a collective investment scheme is an authorised or registered collective investment scheme,
- (d) a former licensee, but subject to the provisions of subsection (2),
- (e) a former authorised or registered collective investment scheme, but subject to the provisions of subsection (2),
- (f) a person carrying on any class or description of controlled investment business -
- (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of business,

- (g) a person other than a person mentioned in paragraph (a), (b), (c) or (f) carrying on any class or description of controlled investment business, but only where the prior written authority of not less than two ordinary

members of the Commission has been obtained,

- (h) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,
- (i) an officer, designated administrator or designated trustee or custodian of -
  - (i) an authorised or registered collective investment scheme or former authorised or registered collective investment scheme, or
  - (ii) an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme,
- (j) where a person (person A) who is a relevant person by virtue of paragraph (h) or (i) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, person A,
- (k) 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,
- (l) 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),

(m) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(n) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(o) 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),

(p) 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,

(q) 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),

(r) 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 controlled investment business, including, without limitation, a person who is an auditor of a relevant person so specified, or

(s) 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 33 apply in relation to a former licensee or former authorised or registered collective investment scheme only for a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be) , 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 33 are exercised in respect of a former licensee or former authorised or registered collective investment scheme within that six year period, they may continue to be exercised in respect of that former licensee or former authorised or registered collective investment scheme after the expiration of that period.

(3) The provisions of section 33 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 33 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 licensee or former authorised or registered collective investment scheme.

(4) For the avoidance of doubt, if the powers conferred by section 33 are exercised in respect of a licensee, authorised or registered collective investment scheme 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, authorisation or registration, 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 33 may be exercised in relation to a person or entity referred to in subsection (1)(l), an associated party referred to in subsection (1)(m), a group entity referred to in subsection (1)(n), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(o) or a company referred to in subsection (1)(q) only -

(a) where it appears necessary or desirable to the Commission to do so -

(i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or

(ii) for the purpose of the performance of its

functions, and

- (b) with the prior written authority of not less than two ordinary members of the Commission.

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

33. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 32 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) 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, and in addition, where that person is an

authorised or registered collective  
investment scheme, any officer,  
designated administrator or designated  
trustee or custodian thereof,

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 (11) 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.

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

34. A person ("A") upon whom a requirement is imposed by or under the provisions of section 33 or 38 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 33 or 38,

and who removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which 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.

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

35. (1) This section applies to any matter of which a person becomes aware in the capacity of auditor and which relates to the business or affairs of -

- (a) a licensee,
- (b) an authorised or registered collective investment scheme,
- (c) a client who appears to be carrying on controlled investment business,
- (d) an associated party of a person or entity specified in paragraph (a), (b) or (c), or
- (e) where the person or entity specified in paragraph (a), (b) or (c) 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.

(2) This section also applies to any matter of which a person

becomes aware in the capacity of a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38, 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.

(3) No duty to which -

- (a) an auditor, or
- (b) a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38,

is subject is contravened by reason of the auditor 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.

(4) It is the duty of -

- (a) an auditor, or

- (b) a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38,

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

- (i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on controlled investment business or to be the holder of a supervised role in respect of a licensee, 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.

(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 (4)(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 (4), 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 licensees, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (4); 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) The provisions of this section also apply in relation to former licensees and formerly authorised or registered collective investment schemes as they apply in relation to licensees and authorised or registered collective investment schemes.

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

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

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

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, designated administrators, designated trustees or custodians, associated parties or officers of, or holders of supervised roles in respect of –

- (i) a licensee or former licensee, or
- (ii) an authorised or registered collective investment scheme or former authorised or registered

collective investment scheme,

(the "**client**") at which the Commission may discuss any aspect of the operation, regulation, licensing, authorisation or registration 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 or conduct

meetings with any person described in subsection (1) and the client or any other person.

**Retention of documents.**

37. (1) The following persons or entities -
- (a) a licensee,
  - (b) an authorised or registered collective investment scheme,
  - (c) a person carrying on any class or description of controlled investment business -
    - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
    - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,
- in respect of that class or description of business,
- (d) a person other than a person mentioned in paragraph (a), (b) or (c) carrying on any class or description of controlled investment business,

- (e) 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 licensee or authorised or registered collective investment scheme, 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.

*Skilled persons*

**Appointment of skilled persons.**

38. (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 licensee,
- (b) an authorised or registered collective investment scheme,
- (c) an applicant for -
  - (i) a licence, or
  - (ii) a declaration that a collective investment scheme

is an authorised or registered collective investment scheme,

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

(e) a former authorised or registered collective investment scheme, but subject to the provisions of subsection (5),

(f) a person carrying on any class or description of controlled investment business -

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

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

in respect of that class or description of business,

(g) a person other than a person mentioned in paragraph (a), (b), (c) or (f) carrying on any class or description of controlled investment business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(h) 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,

(i) a person who is the holder of a supervised role in respect of an inspected person specified in any other paragraph of this subsection,

(j) 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 controlled investment business, including, without limitation, a person who is an auditor of an inspected person so specified, or

(k) 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 licensee or former authorised or registered collective investment scheme only for a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be), 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 licensee or former authorised or registered collective investment scheme within that six year period, they may continue to be exercised in respect of that former licensee or former authorised or registered collective investment scheme 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 licensee or former authorised or registered collective investment scheme.

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensee, authorised or registered collective investment scheme 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, authorisation or registration, 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,
  - (c) a person appointed to make a report under section 3(3)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 5(5) of the Banking Supervision Law, section 5(6)(a) of the Regulation of

Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such an inspected person, and

(d) in the case of an authorised or registered collective investment scheme (and without prejudice to paragraphs (a), (b) and (c)) -

(i) a person who is or has been an officer, designated administrator or designated trustee or custodian of the scheme,

(ii) a person who is a licensee and who is carrying on a restricted activity in connection with the scheme, and

(iii) a person who is an associated party of the scheme.

(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.

#### *Supervised roles*

#### **Supervised roles.**

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

- (a) a director,
- (b) a controller,



- (c) a partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership),
- (d) a money laundering reporting officer,
- (e) a money laundering compliance officer, or
- (f) a compliance officer,

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 40.

(2) A person who, in relation to a body, is appointed as or otherwise becomes the holder of any such position, interest or role as the Committee may specify by regulation as being an approved supervised role for the purposes of this Law shall be deemed for those purposes 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 41.

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

- (a) a significant shareholder,
- (b) 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 controlled investment 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 3 of Schedule 4 (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 (2) or in any other paragraph of this subsection,

- (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 42.

(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.

*Notification of holding of vetted and approved supervised roles, etc  
and acquisition of voting power*

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

40. (1) A person ("A") shall not become the holder of a vetted supervised role in respect of a licensee unless -

- (a) A or the licensee 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 licensee in writing that there is no objection to A 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 licensee 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 licensee.

- (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 23;

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 licensee,
- (b) that the interests of investors or clients of the licensee 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 licensee 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 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 of objection under this section shall (without prejudice to the provisions of section 55) 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 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.

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

41. (1) A person (“B”) shall not become the holder of an approved supervised role in respect of a licensee unless -

- (a) B or the licensee 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 licensee in writing that there is no objection to B 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 23;

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 licensee,

(b) that the interests of investors or clients or potential investors or clients of the licensee 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 licensee 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 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 of objection under this section shall (without prejudice

to the provisions of section 55) 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 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.

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

42. (1) Subject to the provisions of subsection (4), and subject also to the provisions of any rules made by the Commission under Part III of this Law, where any person becomes or ceases to be the holder of a supervised role in respect of a licensee, the licensee 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 23;



and following receipt of such notice from a licensee, the Commission may by notice in writing require the licensee 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 licensee or class, description or category of licensee 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 licensee ("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.

#### *Auditors*

#### **Appointment of auditors.**

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

(2) A licensee making an appointment under this section shall

immediately give the Commission written notice stating -

- (a) the date of the appointment, and
- (b) the name and qualification of the person appointed,

and if an appointment under this section comes to an end the licensee 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 subsection (2), a licensee which is a company shall immediately give written notice and explanation to the Commission -

- (a) if the licensee proposes to give special notice to its members of a resolution removing an auditor before the expiration of the auditor's term of office,
- (b) if the licensee gives notice to its members 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 licensee otherwise than pursuant to such a resolution.

(4) An auditor of a licensee 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 licensee,

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 licensee as they apply in relation to a licensee, but only, subject to the provisions of subsection (6), for a period of three years immediately following the date on which the former licensee ceased to hold a licence.

(6) Where an auditor of a former licensee 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 licensee,

by reason of any fraud of –

- (i) the former licensee, 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 three 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 licensee, former licensee or auditor or class, description or category of licensee, former licensee 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.

#### PART IV

## EXEMPT AND UNLICENSED PERSONS

### **Exempt persons.**

44. (1) Subject to the provisions of subsection (4), the provisions of section 1 of this Law do not apply to any activity carried on by –

- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (b) the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (c) a person other than a Bailiwick body or an individual ordinarily resident in the Bailiwick if that person –
  - (i) carries on that activity in or from within the Bailiwick in a manner in which that person is permitted to carry it on in or from within, and under the law of, a designated jurisdiction which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to investors,
  - (ii) has that person's main place of business in that jurisdiction and does not carry on any restricted activity from a permanent place of business in the Bailiwick,

- (iii) is recognised as a national of that jurisdiction by that person's law, and
  - (iv) has given written notice to the Commission of the date from which that person intends to carry on that activity in or from within the Bailiwick and complied with the requirements applicable under section 3(1) to an applicant for a licence,
- (d) a person, other than a Bailiwick body or an individual ordinarily resident in the Bailiwick, where that activity consists of the promotion of controlled investments to licensees or to any person licensed to carry on business under any of the regulatory laws referred to in paragraphs (a) to (d) of the definition of "**regulatory Laws**" in section 79, and that person -
  - (i) carries on the activity in or from within the Bailiwick in a manner in which that person is permitted to carry it on in or from within, and under the law of, a designated jurisdiction which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to investors,
  - (ii) has that person's main place of business in that jurisdiction and does not carry on any restricted activity from a permanent place of business in the Bailiwick,

- (iii) is recognised as a national of that jurisdiction by that person's law, and
  - (iv) has given written notice to the Commission of the date from which that person intends to carry on that activity in or from within the Bailiwick, or
- (e) a person acting as the servant or agent of another person ("the principal") if the principal –
  - (i) is a licensee, or is exempt from section 1 by virtue of any other paragraph of this subsection,
  - (ii) is responsible, under the terms of the principal's agreement with that servant or agent, for that activity of that servant or agent, and
  - (iii) has complied with the requirements of any rules made under section 15(2)(d), or
- (f) such other person or entity as the States may by Ordinance exempt from those provisions.

(2) Subject to the provisions of subsection (4), the provisions of section 7 of this Law do not apply to the carrying on by a licensee of a restricted activity in connection with a collective investment scheme if –

- (a) the scheme is authorised under the law of a designated jurisdiction which, in the opinion of the Committee, affords in relation to schemes of that class or description adequate protection to investors,
- (b) the activity is carried on in accordance with the requirements subject to which it may lawfully be carried on in that designated jurisdiction.

(3) In this section "**designated jurisdiction**" means a jurisdiction designated from time to time by regulations made by the Committee under this section; and section 22 and section 71 apply in relation to any regulations so made as they apply in relation to regulations made under Part III.

(4) The States may by Ordinance limit the extent of any exemption conferred by or under this section.

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

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

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

**Power to extend other requirements.**



45. The States may by Ordinance provide that any provision of this Law which is expressed to apply to or in respect of licensees, authorised or registered collective investment schemes or any other class or description of person or entity (or their respective officers, employees or designated administrators or designated trustees or custodians or the holders of supervised roles in respect of them) shall apply also, subject to such exceptions, adaptations and modifications as the States think fit, to or in respect of -

- (a) any other person or entity which carries on controlled investment business or the business of a collective investment scheme, including a person or entity which would otherwise be exempt from the provisions of this Law by virtue of section 44, or
- (b) any other person or entity of a class or description specified in the Ordinance (including, for the avoidance of doubt and without limitation, a licensee or authorised or registered collective investment scheme),

or, as the case may be, their officers, employees or designated administrators or designated trustees or custodians or the holders of supervised roles in respect of them.

## PART V

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Civil proceedings*

#### **Agreements made by or through persons in breach of section 1.**

46. (1) Subject to the provisions of subsection (3), a controlled investment agreement –

(a) which is entered into by a person in the course of carrying on controlled investment business in contravention of section 1, or

(b) which is entered into -

(i) by a licensee or by a person who is exempted in respect of the controlled investment business in the course of which that person enters into the agreement, but

(ii) in consequence of anything said or done by a person in the course of carrying on controlled investment business in contravention of section 2,

is unenforceable against the other party; and that party is entitled to recover any money paid, or other property transferred, by that party under the agreement, together with compensation for any loss sustained by that party in consequence of such payment or transfer.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the appropriate court may, on the application of either party, determine.

(3) The appropriate court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under it to be retained, if it is satisfied –

(a) in a case within paragraph (a) of that subsection –

(i) that the person mentioned in that paragraph (“A”) reasonably believed that A’s entering into the agreement did not constitute a contravention of section 1, and

(ii) that in A’s dealings with the other party A has acted substantially in accordance with the rules and regulations applicable to licensees made under the provisions of Part III of this Law,

(b) in a case within paragraph (b) of subsection (1), that the person mentioned in subparagraph (i) of that paragraph neither knew nor ought to have known that the agreement was entered into as mentioned in subparagraph (ii) of that paragraph.

(4) Where a person (“B”) elects not to perform an agreement which by virtue of this section is unenforceable against B, or by virtue of this section recovers money paid or other property transferred by B under an agreement, B shall repay any money and return any other property received by B under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party, references to that property in

subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of the provisions of this Law does not make an agreement illegal or invalid to any greater extent than is provided in this section or in regulations made under section 26(2).

(7) For the purposes of this section the “**appropriate court**” means, in relation to any matter, the court in the Bailiwick having jurisdiction under the law for the time being in force to determine or otherwise deal with the matter.

**Actions for damages.**

47. (1) Without prejudice to the provisions of sections 46 and 47 of the Enforcement Powers Law, a contravention of any provision of–

(a) directions, rules or regulations made under the provisions of this Law, or

(b) section 7 of this Law,

is actionable in the appropriate court, as a breach of statutory duty by the person who has contravened that provision, at the suit of any person who has suffered loss or been otherwise adversely affected as a result of that contravention.

(2) For the purposes of this section the “**appropriate court**” means, in relation to any matter, the court in the Bailiwick having jurisdiction under the law for the time being in force to determine or otherwise deal with the matter.

*Disclosure of information*

**Restrictions on disclosure of information.**

48. (1) Subject to the provisions of section 49 -

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

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

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

**Cases where disclosure is permitted.**

49. Section 48 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 the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,

(c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee, or an authorised or registered collective investment scheme or former authorised or registered collective investment scheme, 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 of –

- (A) a licensee or former licensee, or

- (B) an authorised or registered collective investment scheme or former authorised or registered collective investment scheme,

- (ii) a person appointed to make a report under section 3(3)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 5(5) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and



Intermediaries Law, or

- (iii) a person appointed as a skilled person pursuant to the provisions of section 38 of this Law or the corresponding provisions of the regulatory Laws,
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of -
  - (i) information obtained under the provisions of section 33 or 38 of this Law or sections 7 to 13 of the Enforcement Powers Law, or
  - (ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or entity responsible for a scheme for compensating clients or investors (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, or
- (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 45 of the Banking Supervision Law,
  - (iii) section 39 of the Regulation of Fiduciaries Law,
  - (iv) section 80 of the Insurance Business Law,
  - (v) section 57 of the Insurance Managers and Intermediaries Law, or
  - (vi) section 20 of the Enforcement Powers Law, or
- (o) the disclosure of information for the purpose of

enabling or assisting -

- (i) the Registrar of Companies,
- (ii) the Alderney Registrar,
- (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),
- (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
- (v) the Principal Ombudsman appointed under section 4 of that Law,
- (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),
- (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),
- (viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or

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

to perform their respective functions.

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

50. (1) This section applies, to the exclusion of section 48, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) -

- (a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,
- (b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and
- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

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

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

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

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

- (a) for the purposes or in the circumstances described in section 49(h), or
- (b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

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

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

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

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

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

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

-

- (a) take into account -
  - (i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to which the Commission is subject in respect of the information,
  - (ii) any undertaking entered into by the Commission in relation to the use, disclosure, safekeeping and return of the information, and

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

*Annual return*

**Annual return of licensee and authorised or registered collective investment scheme.**

52. (1) The Commission may make rules requiring the submission by licensees and authorised or registered collective investment schemes to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

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

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism, or
- (c) in the interests of -
  - (i) the public, or
  - (ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 76).

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

- (a) audited accounts and auditors' management letters (or confirmation that the auditors have confirmed that no auditors' management letter is required to be issued),
- (b) an up to date business plan,



- (c) a 12 month financial forecast,
- (d) a certificate signed by a prescribed person confirming -
  - (i) compliance throughout the period covered by the annual return with the provisions of this Law, the appointed Laws and any other prescribed enactment,
  - (ii) that accounts have been prepared and deposited in accordance with the provisions of this Law,
- (e) the names of and other prescribed particulars in respect of -
  - (i) the holders of supervised roles in respect of, or the officers or employees of, a licensee, or
  - (ii) the holders of supervised roles in respect of, or the officers or employees of, or the designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,
- (f) the number of staff employed,
- (g) the number of investors and clients, whether in total or whether in respect of different classes or descriptions of

controlled investment business,

- (h) the licensee's or authorised or registered collective investment scheme's estimate of the value of assets under administration,
- (i) such other information and documents as may be prescribed or as the Commission may determine.

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

- (a) the furnishing, keeping and obtaining, by persons of prescribed descriptions, of information, documents and records of prescribed classes or descriptions,
- (b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,
- (c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,
- (d) the provision of reports, in such form as may be prescribed or as the Commission may determine, by persons who are accountants or who otherwise have

relevant professional skill and who are nominated or approved by the Commission,

- (e) the payment of any fees prescribed by regulations under section 23 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 licensees or authorised or registered collective investment schemes which also hold a licence under any of the regulatory Laws.

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

*Information and educational material*

**Publication of information and material as to controlled investments, etc.**

53. The Commission shall prepare and publish, in such form and manner as it thinks fit and subject to such charges (if any) as it may decide to levy to cover the costs of preparation and publication, such information and documents as it considers necessary or desirable in the interests of investors and the public in general containing material (educational or otherwise) in relation to-

- (a) controlled investments and other classes or descriptions

of investments, and

- (b) the carrying on of controlled investment business.

*Representations, notice of decisions  
and appeals*

**Representations concerning proposed decisions of Commission.**

54. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 57, other than a decision to serve a notice under section 33 or 40, the procedure prescribed in this section shall be followed.

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

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

- (ii) any notice proposed to be served,
  - (d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine,
  - (e) containing or accompanied by, in accordance with the provisions of section 56(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 56(2)), and
  - (f) giving particulars of the right of appeal which would be exercisable under section 57 if the Commission were to make the proposed decision.
- (3) Where -
- (a) a ground for the proposed decision is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) any proposed order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as -

(i) an officer, employee or auditor, or holder of a supervised role, or

(b) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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 57 if the Commission were to make the proposed decision.

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

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

(a) any representations made in response to a notice served under this section, or

(b) any failure or omission to make any such representations.

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of Commission.**

55. (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 57, 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 56(1), a statement of the reasons for the decision (but subject to the provisions of section 56(2)), and

- (e) shall give particulars of the right of appeal conferred by section 57;

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 -
  - (i) an officer, employee or auditor, or holder of a supervised role, or
  - (ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,



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 57.

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

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

- (a) under section 55(1) or (2) of a decision in respect of which a right of appeal is conferred by section 57, or
- (b) under section 54(2) or (3) stating that the Commission is proposing to make such a decision,

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

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

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

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 57.

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

57. (1) A person aggrieved by a decision of the Commission -
- (a) under section 4(1)(b), to refuse an application for a licence,
  - (b) under section 5, to impose any condition in respect of a licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
  - (c) to refuse to vary or rescind any condition so imposed,
  - (d) under section 6 -
    - (i) not to allow the surrender of a licence to be withdrawn, or
    - (ii) not to give consent to the surrender of a licence,
  - (e) under section 8(4), to refuse an application for a declaration that a collective investment scheme is an authorised or registered collective investment scheme of the class specified in the application,

- (f) under section 9, to impose any condition in respect of an authorisation or registration (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
- (g) to refuse to vary or rescind any condition so imposed,
- (h) under section 11 -
  - (i) not to allow the surrender of the authorisation or registration of a collective investment scheme to be withdrawn, or
  - (ii) not to give consent to the surrender of the authorisation or registration of a collective investment scheme,
- (i) under section 30, to give any direction or to vary or rescind any direction so given,
- (j) to refuse to vary or rescind any direction so given,
- (k) under section 33, to serve a notice under that section,
- (l) under section 38, to appoint or require the appointment of a skilled person,
- (m) under section 40 (notification of vetted supervised

roles), to serve a notice of objection,

- (n) under section 41 (notification of approved supervised roles), to serve a notice of objection,
- (o) to omit, pursuant to the provisions of section 56(2), any matter from a statement of reasons provided pursuant to section 56(1),
- (p) 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
- (q) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as -

- (i) an officer, employee or auditor, or holder of a supervised role, or
- (ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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<sup>d</sup>.

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

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

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

Royal Court thinks fit, or

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

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

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

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

This subsection is without prejudice to section 54(6).

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(o) to omit, pursuant

to the provisions of section 56(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.

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

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

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

**Restriction on successive challenges.**

59. (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

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



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 57 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 57 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

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- (a) a decision under section 5 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 9 to impose, vary or rescind any condition in respect of the authorisation or registration of a collective investment scheme,
- (d) a decision to refuse to vary or rescind any such condition,
- (e) a decision under section 30 to give any direction or to vary or rescind any direction so given,
- (f) a decision to refuse to vary or rescind any direction so given,
- (g) a decision to appoint or require the appointment of a skilled person under section 38,
- (h) a decision to serve notice of objection under section 40 (objection to holders of vetted supervised role),
- (i) a decision to serve notice of objection under section 41 (objection to holders of approved supervised role), or

- (j) an order or other decision of a class or description specified by regulations of the Committee.

*Power to exclude liability*

**Power to exclude liability.**

60. (1) The States may by Ordinance provide that no liability shall be incurred -

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

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

- (2) An Ordinance under 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>f</sup>.

*Matters Commission must have regard to*

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

61. (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) -

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

- (i) any guidance notes or international standards relating to controlled investment 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 licensee, authorised or registered collective investment scheme, 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 markets for controlled investments 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.

#### *Criminal proceedings*

#### **Penalties.**

62. (1) A person guilty of an offence under section 42(5) or 43(7) or (8) is liable -

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

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

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

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

**Criminal proceedings against unincorporated bodies.**

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

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality,

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

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

any general partner thereof,

(b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or

(c) any person purporting to act in any capacity described in paragraph (a) or (b),

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

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

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

**Criminal liability of directors etc.**

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

(a) in the case of a company, any director, controller,



secretary or other similar officer thereof,

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

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

**Defence of due diligence.**

65. 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.

**Jurisdiction.**

66. Without prejudice to any jurisdiction exercisable apart from this

section, proceedings for an offence under the provisions of this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

*Supplementary*

**Service of notices and documents.**

67. (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

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(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

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(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 76, 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 licensee, or an applicant for a licence, or a person to whom section 44(1)(c) or (d) applies, by being given to or served on the licensee, applicant or person in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, the address in the Bailiwick of the licensee, applicant or person furnished pursuant to section 3(1)(e),

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 court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the "**appropriate Court**" means

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- (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).

**Power of States to amend Law by Ordinance.**

68. (1) The States may by Ordinance –

- (a) amend Part I or II or sections 32 to 37, 54 to 59, 62 or 80, where it appears to the States to be necessary or expedient to do so for the purpose of –
  - (i) enabling the Commission more effectively to perform any of its functions,
  - (ii) enhancing or protecting the reputation or economic interests of the Bailiwick,
  - (iii) improving or enhancing the investigation, prevention or detection of crime,
  - (iv) facilitating the instigation of, or otherwise for the purposes of, any criminal, civil, administrative or regulatory proceedings,
  - (v) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,



- (vi) discharging any international obligation to which the Bailiwick is subject, or
- (vii) assisting, in the interests of the public or otherwise, any relevant supervisory authority, and
- (b) make such additional provision as they think fit for the purposes of carrying the provisions of this Law into effect.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

**Power to implement EU measures on markets in financial instruments.**

69. (1) The States may by Ordinance make such provision as they think fit, including provision amending this Law, the regulatory Laws or any other enactment, for the purpose of implementing in the Bailiwick or any part thereof -

- (a) the provisions of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("**MiFID II**"), and
- (b) the provisions of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("**MiFIR**").

(2) An Ordinance under this section may, without limitation, establish any scheme considered by the States to be desirable or expedient for the protection and compensation of investors, customers and clients in cases where licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their business, being business regulated by the provisions of this Law.

(3) Without limitation, an Ordinance made by virtue of subsection (2) may make provision in respect of all or any of the following matters -

- (a) the establishment of a fund for the protection and compensation of investors, customers and clients,
- (b) the holding, management and application of the said fund,
- (c) the making of contributions to the fund and the levying thereof from licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes,
- (d) the costs, expenses and other items which are to be chargeable to the fund,
- (e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in

which they are to be made,

- (f) the description and amount of the investments, deposits or other liabilities, and the description of the creditors, to be protected,
- (g) the liability of licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes in respect of compensation payments,
- (h) the payment or repayment of claims, contributions or other monies, or any description thereof,
- (i) the tax treatment of contributions and repayments thereof and of the income of the fund,
- (j) the crediting of monies and income to the fund,
- (k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,
- (l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body, and

- (m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights,

including, with appropriate modifications, provision corresponding to that set out in the preceding paragraphs of this subsection in respect of the regulatory Laws and matters falling within them.

- (4) In this section –

**“enactment”** means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick,

**"customers"** includes depositors and investors (within the meaning of the Banking Supervision Law), clients (within the meaning of the Regulation of Fiduciaries Law) and policyholders and clients (within the meaning of the Insurance Business Law and the Insurance Managers and Intermediaries Law),

**"implementation"**, in relation to the provisions of MiFID II and MiFIR, includes the enforcement or enactment of the provisions, and the securing of the administration, execution, recognition, exercise or enjoyment of the provisions, in or under domestic law, and

**"the provisions"** of MiFID II and MiFIR include -

- (a) any provision contained in or arising under them, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or

procedure provided for, by or under them.

(5) The powers conferred by this section are in addition to and not in derogation from the provisions of -

(a) the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, and

(b) section 18 (indemnity and compensation rules).

**Power to make Ordinances in respect of credit rating agencies.**

70. (1) The States may by Ordinance make such provision as they think fit in respect of the regulation, supervision, licensing or registration of credit rating agencies and the activities thereof including, without limitation, provision implementing the provisions of the IOSCO principles.

(2) An Ordinance under this section may, without limitation, make provision, subject to such exceptions, adaptations and modifications as the States think fit, corresponding to that which is made by or which may be made under the provisions of this Law and the regulatory Laws.

(3) In this section -

"**credit rating**" has the meaning given by article 3(1)(a) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ("credit rating means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial

instrument, issued using an established and defined ranking system of rating categories"),

"**credit rating agency**" has the meaning given by article 3(1)(b) of that Regulation ("credit rating agency means a legal person whose occupation includes the issuing of credit ratings on a professional basis"),

"**implementation**", in relation to the provisions of the IOSCO principles, includes the enforcement or enactment of the provisions, and the securing of the administration, execution, recognition, exercise or enjoyment of the provisions, in or under domestic law,

"**IOSCO principles**" means the International Organisation of Securities Commissions Objectives and Principles of Securities Regulation,

"**the provisions**" of the IOSCO principles include -

- (a) any provision contained in or arising under them, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under them.

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

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

- (a) for the purpose of carrying the provisions of this Law into effect, and

- (b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

(2) 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 or regulation -

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (4)),

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

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

(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 the provisions of this Law (other than an Ordinance under section 83), consult

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

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

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

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 83) ceases to have effect –

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

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

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

(b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section -

(a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and

(b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

72. Regulations made under the provisions of this Law -

(a) where made by the Commission, shall be made after consultation with the Committee, the Policy and

Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,

- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

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

73. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions under the provisions of this

Law, and

- (b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any 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 23, or
- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

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

74. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

- (a) in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general,

and

- (b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render 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.

**Regulations and rules are statutory instruments.**

75. 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>i</sup>, the provisions of which shall apply accordingly.

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

76. (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

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

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>j</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>k</sup> and the Electronic Transactions (Sark) Law, 2001<sup>l</sup>.

#### **Verification of information.**

77. (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.

#### **Evidence.**

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

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

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



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

- (a) that a particular person is or is not a licensee or former licensee or was or was not a licensee or former licensee at a particular time,
- (b) that a particular collective investment scheme is or is not an authorised or registered collective investment scheme or was or was not an authorised or registered collective investment scheme at a particular time,
- (c) the date on which a particular person obtained or ceased to hold a licence,
- (d) the date on which a particular collective investment scheme became or ceased to be an authorised or registered collective investment scheme,
- (e) the terms of any conditions imposed in respect of a particular licence, authorisation or registration,

is admissible in evidence.

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

**Interpretation.**

79. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) -

**"administration manager"** means a person appointed by the Royal Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"advertisement"** includes every form of advertising and any means of bringing an invitation or information to the notice of any person including, without limitation, by publication, broadcast, electronic means, circulars, notices, window displays, posters, brochures and leaflets, and references to the "issue" of an advertisement shall be construed accordingly,

**"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>m</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (Alderney) Law, 1994,

**"ancillary vehicle"** : see section 20,

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<sup>m</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

**"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,
- (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 33(1),

**"appropriate court"** : see sections 30(13), 46(7), 47(2) and 67(6),

**"approved supervised role"** : see section 39(2),

**"associate"**, in relation to any person, means -

- (a) the spouse, civil partner or child of that person,

- (b) a person with whom that person is living as if they were married or civil partners (a "**cohabitant**"),
- (c) any body of which that person is a director,
- (d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,
- (e) if that person is a company -
  - (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (f) where that person is an unincorporated body, any director of that body,
- (g) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power (whether in general meeting or otherwise) in relation to a company, that other person:

Provided always that the Commission may by regulation amend the definition of "associate",

**"associated party"**, in relation to any person, means -

- (a) any person who is a partner (or fellow member, in the case of a limited liability partnership) of that person,
- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) any body in respect of which that person holds a supervised role,
- (e) where that person is a company -
  - (i) a holding company, subsidiary or related company of that person,
  - (ii) a subsidiary or related company of a holding company of that person,
  - (iii) a holding company of a subsidiary of that person, or
  - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

Provided always that the Commission may by regulation amend the definition of "associated party",

**"auditor"** means -

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008 and who is, where required by or under the provisions of this Law, authorised by the Commission to audit the accounts of licensees or authorised or registered collective investment schemes, or
- (b) any other person who performs or has performed the functions of an auditor of a licensee or an authorised or registered collective investment scheme,

**"authorised collective investment scheme"** means a collective investment scheme declared in an authorisation issued by the Commission under section 8 to be an authorised collective investment scheme for the purposes of this Law; and "authorisation" and related expressions shall be construed accordingly,

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

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

**"Bailiwick body"** means -

- (a) a Guernsey body, being -
  - (i) a Guernsey company,
  - (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or
  - (iii) an unincorporated body whose principal place of business is in Guernsey,
- (b) an Alderney body, being -
  - (i) an Alderney company, or
  - (ii) an unincorporated body whose principal place of business is in Alderney,
- (c) a Sark body, being any body, other than one mentioned

in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

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

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<sup>n</sup> Approved by the States of Deliberation on the \*\* August, 2020.

<sup>o</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.



2004<sup>P</sup>,

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

**"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,

**"closed-ended investment scheme"** means a collective investment scheme under which the investors are not entitled under the terms of the

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<sup>P</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); and the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012).

scheme -

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

**"cohabitant"** : see paragraph (b) of the definition of "associate",

**"collective investment scheme"** means any arrangement such as is identified and described in Category 1 in paragraph 1 of Schedule 1,

**"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"**, subject to the provisions of paragraph 2(2) of Schedule 1, 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,

**"contravention"** includes failure to comply,

**"controlled investment"** : see section 1(3)(b) and Schedule 1,

**"controlled investment agreement"** means any agreement –

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting a controlled investment,
- (b) under which a person is to receive advice as to the acquisition or disposal of, subscription for or underwriting of a controlled investment or as to the exercise of the rights conferred by a controlled investment,
- (c) under which arrangements are to be made with a view to another person acquiring, disposing of, subscribing for or underwriting a controlled investment, or
- (d) under which a person's controlled investments are to be managed,

**"controlled investment business"** : see section 1(3),

**"controller"**, in relation to a body, means -

- (a) a managing director or chief executive of that body or

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

- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another,  
to appoint or remove a director of a board or a member  
of the committee or other similar governing body of that  
body or (where that body is a company) of any other  
company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the  
Court of Appeal (Guernsey) Law, 1961<sup>9</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"designated administrator"** and **"designated trustee or custodian"** in  
relation to an authorised or registered collective investment scheme means the  
person designated as such by the Commission for the purposes of this Law,

**"designated jurisdiction "** : see section 44(3),

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

**"directed person"** : see section 30(1),

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<sup>9</sup> Ordres en Conseil Vol. XVIII, p. 315.

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

(a) in relation to information stored or recorded otherwise 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",

**"electronic address"** : see section 67(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>r</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,

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

**"former authorised or registered collective investment scheme"**

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<sup>r</sup> Approved by the States of Deliberation on the \*\* August, 2020.

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



means a collective investment scheme which –

- (a) does not hold and is not deemed to hold an authorisation or registration under this Law, but
- (b) has previously held such an authorisation or registration or an authorisation or registration under the Protection of Investors Law, 1987,

and also includes any person or entity described in section 81(4) or (6),

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

- (a) does not hold and is not deemed to hold a licence under this Law, but
- (b) has previously held or been deemed to hold such a licence or a licence under the Protection of Investors Law, 1987,

and also includes any person described in section 81(3) 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>t</sup>, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

**"functions"** includes duties, powers and privileges,

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

**"general partner"** means -

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>u</sup>, and

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<sup>t</sup> Order in Council No. I of 2013.

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

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

"**group**", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

"**group entity**" means a body or entity carrying on controlled investment business and which is not a licensee but which is part of a group containing a licensee,

"**Guernsey company**" means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008,

"**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) Law, 2013<sup>v</sup>,

"**Guernsey limited partnership**" means a limited partnership which is

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<sup>v</sup> Order in Council No. VI of 2014.

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 5,

**"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, 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 38(4),

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>w</sup>,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>x</sup>,

**"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>y</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"** means a collective investment scheme under

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

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

<sup>y</sup> Order in Council No. III of 1994.

which the property in question belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading risk and giving its members the benefit of the results of the management of those funds,

**"investment exchange"** means a market for the buying and selling of–

- (a) shares, debentures or securities,
- (b) instruments entitling their holders to subscribe for, or certificates representing property rights in, shares, debentures or securities,
- (c) contracts for property or commodity futures or contracts for differences,
- (d) rights under insurance contracts the effecting and carrying out of which in the Bailiwick would constitute long term business within the meaning of the Insurance Business Law, or
- (e) options to acquire or dispose of, or other rights or interest in, any investment mentioned in this definition,

**"investor"** means a person having any asset, right or interest (whether vested or contingent) in relation to a controlled investment,

**"joint enterprise"** means an enterprise into which two or more persons ("the participators") enter for commercial reasons related to a business or

businesses (other than controlled investment business) carried on by them; and where a participator is a company and a member of a group each other member of the group shall also be regarded as a participator in the enterprise,

**"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>z</sup>,

**"licence"** means a licence to carry on controlled investment business issued under the provisions of this Law; and **"licensed"** and **"licensee"** shall be construed accordingly,

**"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 insurer"** means a person who is a licensee within the meaning of the Insurance Business Law (that is, a person who is a licensed insurer under that Law),

**"limited liability partnership"** means -

- (a) a Guernsey limited liability partnership, or

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<sup>z</sup> Ordres en Conseil Vol. XLIII, p. 617.

- (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>aa</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

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



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 laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"liquidator"** includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

**"member"**, in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008<sup>bb</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

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

meaning given by section 114(1) of the Limited Liability Partnerships (Guernsey) Law, 2013,

**"minimum criteria for licensing"** means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 4,

**"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,

**"notified supervised role"** : see section 39(3),

**"occupational pension scheme"** : see paragraph 1(4) of Schedule 1,

**"officer"** -

- (a) in relation to a company, includes a director, liquidator, manager and secretary thereof, and
- (b) in relation to an authorised or registered collective investment scheme, or an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme, includes a director, partner, managing director, chief executive,

trustee (in the case of a unit trust), member (in the case of a limited liability partnership) or general partner (in the case of a limited partnership) of that scheme or applicant,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, and -

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his 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,

(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,

**"open-ended investment scheme"** means a collective investment  
scheme under which the investors are entitled under the terms of the scheme  
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(a) to have their units redeemed or repurchased by, or out  
of funds provided by, the scheme, or

(b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

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

**"other supervised manager"** : see section 39(3)(b),

**"partner"** has the same meaning as in the Partnership (Guernsey) Law,  
1995<sup>cc</sup>, and includes a general partner and limited partner of a limited  
partnership,

**"partnership"** : see section 1 of the Partnership (Guernsey) Law, 1995,

**"person"** includes -

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<sup>cc</sup> Ordres en Conseil Vol. XXXVI, p. 179.

- (a) an individual,
- (b) a company,
- (c) any other legal person, and
- (d) an unincorporated body,

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

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

**"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, 1987"** means the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>dd</sup>,

**"promotion"** : see Schedule 2,

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<sup>dd</sup> Ordres en Conseil Vol. XXX, p. 281; there are amendments not material to this enactment.

"**prospectus**" means any prospectus, notice, circular, or other document containing detailed information about an offer to the public of any controlled investment for subscription, purchase or exchange,

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),

the "**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, investors and clients and potential investors 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, investors or clients of, in or with that body:

Provided that a controlled investment is not promoted to the public by a promotion directly communicated to an identifiable category of persons not

exceeding 50 in number if those persons are in possession of sufficient information to be able to make a reasonable evaluation of any offer included in the promotion and are the only persons who may accept any such offer,

the "**purposes of**" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

"**qualifying capital interest**" : see the definition of "related company" below,

"**recognised investment exchange**" means an investment exchange which appears to the Commission to be situate in, and recognised as an investment exchange within the meaning of the law relating to investment exchanges of -

- (a) any member State of the European Union,
- (b) any jurisdiction prescribed by rules of the Commission,  
or
- (c) any jurisdiction specified in writing by the Commission  
in any particular case or for any particular purpose,

"**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),

**"registered collective investment scheme"** means a collective investment scheme declared in a registration issued by the Commission under section 8 to be a registered collective investment scheme for the purposes of this Law, and **"registration"** and related expressions shall be construed accordingly,

**"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>ee</sup>,

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>ff</sup>,

**"regulations"** means regulations made under the provisions of this Law,

**"regulatory Laws"** means -

- (a) the Banking Supervision Law,

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

<sup>ff</sup> Approved by the States of Deliberation on the \*\* August, 2020.



- (b) the Regulation of Fiduciaries Law,
- (c) the Insurance Business Law,
- (d) the Insurance Managers and Intermediaries Law,
- (e) the Financial Services Commission Law,
- (f) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,
- (g) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (h) the Enforcement Powers Law,
- (i) any other enactment prescribed for the purposes of this Law by 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 electronic address"** : see section 67(1)(iii),

**"relevant document"** : see section 13(3),

**"relevant person"** : see section 32(1),

**"relevant supervisory authority"** means -

(a) an authority performing in the Bailiwick or any other jurisdiction -

(i) functions corresponding to any functions of the Commission, or

(ii) such other functions as the Committee may by regulation prescribe,

including functions in respect of the Bailiwick,

(b) any international organisation, that is to say, any organisation, community or body -

(i) of which the United Kingdom or any other sovereign power is a member, or

(ii) which is established under any international agreement,

(c) a self-regulatory organisation, or

(d) a resolution authority, that is to say, a public authority

that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

**"restricted activity"** : see section 1(3)(c) and Schedule 2,

**"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 the proceedings or any matter relevant thereto,

**"rules"** means rules made under the provisions of Part III of this Law,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction -

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or

- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

**"servant"** includes a person working under a contract for services and an employee,

**"shareholder controller" -**

- (a) in relation to a body, and subject to the provisions of paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a body (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 38(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,

**"specified class"**, in relation to an authorised or registered collective investment scheme, means a class specified by rules made under section 19(2),

**"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 5 (and **"subsidiary"** has the same meaning),

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

**"transmitted"** : see section 67(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>88</sup>,

**"units"** means the rights and interests (however described) of investors in a collective investment scheme,

**"vetted supervised role"** : see section 39(1).

(2) Unless the contrary intention appears, references in the provisions of this Law to -

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) Any note in a Schedule to this Law is an integral part of this Law and shall be construed accordingly.

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<sup>88</sup> Ordres en Conseil Vol. XXXI, p. 278.

(4) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(5) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

(6) Subsection (5) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

**Repeals.**

80. The following enactments or provisions of enactments are repealed –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>hh</sup>,
- (b) in Schedule 2 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, the entries relating to the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>ii</sup>,
- (c) section 45(3) of the Limited Partnerships (Guernsey) Law, 1995<sup>jj</sup>,

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<sup>hh</sup> Ordres en Conseil Vol. XXX, p. 281.

<sup>ii</sup> Ordres en Conseil Vol. XXX, p. 243.

<sup>jj</sup> Ordres en Conseil Vol. XXXVI, p. 264.



- (d) the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997<sup>kk</sup>,
- (e) section 2(3) of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002<sup>ll</sup>,
- (f) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003<sup>mm</sup>,
- (g) the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003<sup>nn</sup>,
- (h) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007<sup>oo</sup>,
- (i) in the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009<sup>pp</sup>, the entries relating to the Protection of

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<b>kk</b>	Ordres en Conseil Vol. XXXVII, p. 24.
<b>ll</b>	Order in Council No. XVII of 2002.
<b>mm</b>	Order in Council No. XV of 2003.
<b>nn</b>	Order in Council No. XXXII of 2003.
<b>oo</b>	Order in Council No. XVIII of 2008.
<b>pp</b>	Order in Council No. XIII of 2010.

Investors (Bailiwick of Guernsey) Law, 1987,

- (j) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010<sup>qq</sup>,
- (k) the Protection of Investors (Amendment) Ordinance, 1988<sup>rr</sup>,
- (l) the Protection of Investors (Amendment) Ordinance, 1994<sup>ss</sup>,
- (m) the Protection of Investors (Amendment) Ordinance, 1998<sup>tt</sup>,
- (n) the Protection of Investors (Amendment No. 2) Ordinance, 1998<sup>uu</sup>,
- (o) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008<sup>vv</sup>,

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<sup>qq</sup> Order in Council No. XX of 2010.

<sup>rr</sup> Recueil d'Ordonnances Tome XXIV, p. 324.

<sup>ss</sup> Recueil d'Ordonnances Tome XXVI, p. 333.

<sup>tt</sup> Recueil d'Ordonnances Tome XXVIII, p. 51.

<sup>uu</sup> Recueil d'Ordonnances Tome XXVIII, p. 87.

<sup>vv</sup> Ordinance XXXI of 2008.

- (p) section 4(b) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015<sup>ww</sup>,
- (q) section 1(2)(b) of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015<sup>xx</sup>,
- (r) section 63(2) of the Single Euro Payments Area (Guernsey) Ordinance, 2016<sup>yy</sup>,
- (s) paragraph 2 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017<sup>zz</sup>,
- (t) paragraph 2 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017<sup>aaa</sup>,
- (u) paragraph 2 of the Second Schedule to the Transfer of

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<sup>ww</sup> Ordinance No. XII of 2015.

<sup>xx</sup> Ordinance No. XXXIX of 2015.

<sup>yy</sup> Ordinance No. II of 2016.

<sup>zz</sup> Alderney Ordinance No. III of 2017.

<sup>aaa</sup> Ordinance No. XXVII of 2017.

Funds (Sark) Ordinance, 2017<sup>bbb</sup>,

(v) regulation 1 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010<sup>ccc</sup>,

(w) regulation 1(1) of the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017<sup>ddd</sup>,

(x) paragraph 2(1) of Schedule 4 to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>eee</sup>.

**Savings and transitional provisions.**

81. (1) A person who, immediately before the commencement of this Law, was a licensee within the meaning of the Protection of Investors Law, 1987 shall, on the commencement of this Law, be deemed -

(a) to be a licensee, and

(b) to have been granted a licence,

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<sup>bbb</sup> Sark Ordinance No. X of 2017.

<sup>ccc</sup> G.S.I. No. 83 of 2010.

<sup>ddd</sup> G.S.I. No. 50 of 2017.

<sup>eee</sup> Order in Council No. VI of 2017.

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Protection of Investors Law, 1987 in respect of that person's licence or in respect of licensees generally shall apply in respect of the licence under this Law which that person is deemed to hold by virtue of this subsection.

(2) A person or entity which, immediately before the commencement of this Law, was an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, 1987 shall, on the commencement of this Law, be deemed -

- (a) to be an authorised or registered collective investment scheme, and
- (b) to have been granted an authorisation or registration,

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly.

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Protection of Investors Law, 1987 in respect of that person's or entity's authorisation or registration or in respect of authorised or registered collective investment schemes generally shall apply in respect of the authorisation or registration under this Law which that person or entity is deemed to hold by virtue of this subsection.

(3) A person who before the commencement of this Law was at any time but had ceased to be a licensee within the meaning of the Protection of Investors Law, 1987 shall (unless that person is for the time being a licensee within the meaning of this Law) be deemed to be a former licensee within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(4) A person or entity which before the commencement of this Law was at any time but had ceased to be an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, 1987 shall (unless it is for the time being an authorised or registered collective investment scheme within the meaning of this Law) be deemed to be a former authorised or registered collective investment scheme within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(5) A person who at any time before the commencement of this Law carried on controlled investment business -

- (a) and who was exempted by the provisions of the Protection of Investors Law, 1987 from the requirement to be licensed thereunder, or
- (b) otherwise in such circumstances specified in the provisions of that Law as not to require licensing thereunder,

in respect of such business, but -

- (i) who is no longer carrying on controlled investment business, or

- (ii) who is not exempted by the provisions of this Law from the requirement to be licensed hereunder or who may not carry on controlled investment business in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

shall (unless that person is for the time being a licensee within the meaning of this Law) be deemed to be a former licensee within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(6) A person or entity which at any time before the commencement of this Law was a collective investment scheme -

- (a) and which was exempted by the provisions of the Protection of Investors Law, 1987 from the requirement to be authorised or registered thereunder, or
- (b) otherwise in such circumstances specified in the provisions of that Law as not to require authorisation or registration thereunder,

but -

- (i) which is no longer a collective investment scheme, or
- (ii) which is not exempted by the provisions of this

Law from the requirement to be authorised or registered hereunder or which may not be a collective investment scheme in such circumstances specified in the provisions of this Law as not to require authorisation or registration hereunder,

shall (unless it is for the time being an authorised or registered collective investment scheme within the meaning of this Law) be deemed to be a former authorised or registered collective investment scheme within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(7) Any reference in any enactment, however expressed, to an enactment or any provision of an enactment repealed by this Law and re-enacted (with or without modification) by, or by any provision of, this Law or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the enactment, or the provision of the enactment, as re-enacted.

(8) Any reference in any enactment, however expressed, to a licensee or a licence within the meaning of the Protection of Investors Law, 1987 shall be construed, after the commencement of this Law, as a reference to a licensee or (as the case may be) a licence within the meaning of this Law.

(9) Any Ordinance or subordinate legislation made or other thing done under an enactment or any provision of an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under, or under any provision of, this Law or the Enforcement Powers Law shall have effect, after the commencement of this Law, as if made or done under, or under that provision



of, this Law or the Enforcement Powers Law (as the case may be).

(10) Subsection (9) applies to any subordinate legislation made under a provision of an enactment repealed by this Law notwithstanding that the corresponding provision of this Law or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(11) Anything in the process of being done on the commencement of this Law under an enactment or a provision of an enactment repealed by this Law which could be done under, or under any provision of, this Law or the Enforcement Powers Law may be continued to be done after the commencement of this Law under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(12) The Committee may make regulations containing such savings and transitional provision as it thinks fit -

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of any enactment repealed by this Law which are re-enacted (with or without modification) by the provisions of this Law to the corresponding provisions of this Law.

(13) Regulations under subsection (12) may, without limitation, make such provision in respect of any provision of this Law, including a provision

already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(14) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any other provision of this Law.

**Citation.**

82. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

83. This Law shall come into force on the day appointed by Ordinance of the States, and different days may be appointed for different provisions or different purposes.

## SCHEDULE 1

Section 1(3)(b)

### CONTROLLED INVESTMENTS

#### *Category 1:*

#### *Collective investment schemes*

1. (1) A collective investment scheme constitutes a controlled investment for the purposes of this Law; and, subject to the provisions of this paragraph a collective investment scheme is any arrangement relating to property of any description (including money) -

- (a) the purpose or effect of which is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income,
- (b) in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions), and
- (c) under which –
  - (i) the contributions of the investors and the profits or income out of which payments are to be made to them are pooled, or

- (ii) the property in question is managed as a whole by or on behalf of the person responsible for its management.

(2) Where any arrangement provides for parts of the assets in question to be owned by different investors or for such pooling as is mentioned in subparagraph (1)(c)(i) in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless it has the characteristic mentioned in subparagraph (1)(c)(ii) or the investors are entitled to exchange rights in one part for rights in another.

(3) The following are not collective investment schemes –

- (a) an arrangement operated by a person otherwise than by way of business,
- (b) an arrangement where each of the investors carries on a business other than investment business and enters into the arrangement for commercial purposes related to that business,
- (c) an arrangement where each of the investors is a company in the same group as the manager,
- (d) an arrangement where –
  - (i) each of the investors is a bona fide employee or former employee (or the wife, husband, widow, widower, child under the age of 18 or step-child

under the age of 18 of such an employee or former employee) of a company in the same group as the company responsible for the management of the arrangement, and

- (ii) the property to which the arrangement relates consists of securities in or of a member of that group,
- (e) an arrangement where the receipt of the investors' contributions constitutes the acceptance of a deposit in the course of the carrying on of a deposit-taking business within the meaning of the Banking Supervision Law,
- (f) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trade name or design or other intellectual property or the good-will attached to it,
- (g) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons,
- (h) a contract of insurance,
- (i) an occupational pension scheme,

- (j) an arrangement under which -
  - (i) the units of investors consist of instruments which confer rights (other than options to purchase) in respect of only one issue, or
  - (ii) each investor owns a part of the property and may withdraw it at any time, if the arrangement does not involve such pooling as is mentioned in subparagraph (1)(c)(i) and falls within subparagraph (1)(c)(ii) only because each investor's property is not separately bought and sold except when a person becomes, or ceases to be, an investor,
- (k) a friendly society registered under an enactment relating to friendly societies and recognised by the Commission as being such a society.

(4) In this paragraph an "**occupational pension scheme**" means an arrangement comprised in one or more instruments or agreements which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

*Category 2:*

*General securities and derivatives*

2. (1) General securities and derivatives constitute controlled investments for the purposes of this Law; and for those purposes general securities and derivatives comprise -

- (a) shares and stock in the share capital of a company other than an investment company,
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging the indebtedness of a company or public sector body; but this item does not extend -
  - (i) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services,
  - (ii) to a cheque or other bill of exchange, a banker's draft or a letter of credit,
  - (iii) to a bank note, a bank statement, or (by reason of any financial obligation contained in it) to any lease or disposition of real property, to any bond or other security over real property, or to an insurance policy,
- (c) without prejudice to the generality of item (a), shares in an investment company,

- (d) warrants or other instruments entitling the holder to subscribe for investments falling within items (a), (b), or (c),
- (e) certificates or other instruments which confer proprietary, disposal, underwriting, conversion or acquisition rights in respect of investments falling within any of items (a) to (d),
- (f) options to acquire or dispose of -
  - (i) an investment falling within any other item of this subparagraph, or within this item,
  - (ii) currency, or
  - (iii) gold, palladium, platinum or silver,
- (g) rights under a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers and clients of banks and bureaux de change,



- (h) rights under a contract for differences, or under any other contract of which the purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description, or in an index or other factor designated for that purpose in the contract, except where the parties intend that the profit be obtained, or the loss be avoided, by taking delivery of the property to which the contract relates,
- (i) rights to, and interests in, any of the foregoing investments.

(2) In this paragraph -

**"company"** means any body (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body,

**"public sector body"** means any international, national or local government, governmental or other public body or organisation.

## SCHEDULE 2

Section 1(3)(c)

### RESTRICTED ACTIVITIES

The activities which, for the purposes of this Law, constitute restricted activities when carried on in connection with a controlled investment are:

1. **Promotion**, that is to say –

- (a) advertising,
- (b) issuing a prospectus, application form or proposal form,
- (c) circulating or making available promotional material.

2. **Subscription**, that is to say, receiving funds or assets for the purposes of investment.

3. **Registration**, that is to say –

- (a) recording particulars of a specified investor,
- (b) issuing a certificate or policy to a specified investor or to bearer.

4. **Dealing**, that is to say –

- (a) buying, selling, subscribing for, borrowing, lending or underwriting an investment,

- (b) making arrangements for another person to buy, sell, subscribe for, borrow, lend or underwrite an investment,
- (c) providing facilities for another person to realise the value of an investment.

5. **Management**, that is to say, exercising any managerial function in relation to an investment or in relation to the assets underlying an investment.

6. **Administration**, that is to say, providing any administrative, secretarial or clerical services in relation to an investment, including –

- (a) the provision of general accountancy and book-keeping services, but not the audit of accounts, and
- (b) the provision of valuation services on a continuing basis in connection with any dealing in an investment.

7. **Advising**, that is to say, giving advice as to the purchase, sale, subscription for or underwriting of particular investments, or advice as to the exercise of rights conferred by particular investments.

8. **Custody**, that is to say -

- (a) holding as trustee or custodian the assets underlying a collective investment scheme, within the meaning of category 1 in Schedule 1, or the evidence of title to those

assets,

- (b) safeguarding assets belonging to others which comprise general securities and derivatives within the meaning of category 2 in Schedule 1, or the evidence of title to such assets.

9. *Operating an investment exchange*, that is to say, providing a facility, whether by electronic means or otherwise, for the orderly trading of securities, or for the listing of securities for the purpose of trading, by members of the investment exchange.

*Note A:*

*Procurement of facilities*

Entering into a contract with a person for the performance by that person of any restricted activity also constitutes a restricted activity for the purposes of this Law.

*Note B:*

*Incidental activities*

An activity undertaken in the course of a profession or business which is not itself controlled investment business is not a restricted activity if the activity is -

- (a) a part of other services provided in the course of that profession or business, and
- (b) undertaken without separate or additional remuneration, whether from the client concerned or

from a third party.

*Note C:*

*Groups and joint enterprises*

An activity described in paragraph 4, 5, 6, 7 or 8 of this Schedule is not a restricted activity if the parties involved –

- (a) are companies in the same group, or
- (b) are, or propose to become, participators in a joint enterprise and the activity is undertaken in connection with that enterprise.

*Note D:*

*Overseas collective investment schemes -  
limited applicability of section 7*

For the purposes of section 7 (though not for any other purpose) an activity carried on by a licensee in connection with a collective investment scheme incorporated or established under the law of a jurisdiction outside the Bailiwick is only a restricted activity if -

- (a) the manager of the scheme is, or has delegated the duties of manager to, a licensee, and
- (b) the custodian or trustee of the scheme is, or has delegated the duties of custodian or trustee to, a licensee.

## SCHEDULE 3

Section 8(5)

### REQUIREMENTS FOR AUTHORISED OR REGISTERED COLLECTIVE INVESTMENT SCHEMES

1. The scheme must comply with the provisions of all rules made under the provisions of this Law applicable to the class of authorised or registered collective investment scheme which it is declared to be.
2. The name of the scheme must not be undesirable or misleading.
3. The purposes of the scheme must be reasonably capable of being successfully carried into effect.
4. A scheme which is promoted or otherwise described as an open-ended investment scheme must entitle investors either -
  - (a) to have their units redeemed or repurchased at a price related to the net value of the property to which the units relate, or
  - (b) to sell their units on a recognised investment exchange at a price not significantly different from that mentioned in subparagraph (i) of this paragraph.
5. The designated administrator and the designated trustee or custodian of the assets of a scheme which is promoted or otherwise described as an open-ended investment scheme must each be a company.

**Power to make regulations.**

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

SCHEDULE 4  
MINIMUM CRITERIA FOR LICENSING

**Fit and proper persons.**

1. (1) The applicant or licensee is a fit and proper person to hold a licence and every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee, is a fit and proper person to hold that position.

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 investors and clients 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,  
and

- (g) A's policies, procedures and controls to comply with any rules, codes, guidance, principles, policies and instructions referenced in paragraph 2(2).

(2) Without prejudice to the generality of subparagraph (1), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that that person has -

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any of the provisions of –
  - (i) this Law,
  - (ii) the 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, any 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),
- (c) engaged in any business practices (whether unlawful or not) -
  - (i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or
  - (ii) which otherwise reflect discredit on that person's method of conducting business or that

person's suitability to carry on business  
regulated by the provisions of this Law, or

- (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.

(3) For the purposes of this paragraph and for the avoidance of doubt -

- (a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,
- (b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and
- (c) "**enactment**" includes any primary, secondary or tertiary legislation of any jurisdiction in the British Islands or elsewhere.

**Integrity and skill.**

2. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by the provisions of this Law, will be carried on-

- (a) with prudence and integrity,

- (b) with professional skill appropriate to the nature and scale of the activities of the applicant or licensee, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting business the applicant or licensee shall at all times act in accordance with the following documents issued by the Commission -

- (a) the Principles of Conduct of Finance Business,
- (b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensee.

**Business to be directed by at least two individuals.**

3. (1) At least two individuals, who are -

- (a) of appropriate standing and experience, and
- (b) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensee.

(2) For the purposes of subparagraph (1)(b), an individual is sufficiently independent of another where, in the opinion of the Commission, that

individual would not be unduly influenced by that other individual.

**Composition of board of directors.**

4. Where the applicant or licensee is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

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

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

(2) Without prejudice to subparagraph (1) and subject to the provisions of 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 the company, 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, and
- (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), the Commission shall also have regard, in determining whether an applicant or licensee is to be regarded as conducting its business in a prudent manner, 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 investors and clients and potential investors and clients, 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 managed prudently, 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 1(1)(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.

**Information required by the Commission.**

6. The applicant, licensee and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

**Power to make regulations.**

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

SCHEDULE 5  
MEANING OF "HOLDING COMPANY" AND  
"SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if -

- (a) that other -
  - (i) is a member of it and controls the composition of its board of directors, or
  - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

- (a) that a person cannot be appointed thereto without the exercise in that person's favour by that other company

of such a power,

- (b) that a person's appointment thereto follows necessarily from that person's appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another -

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to the provisions of items (c) and (d), any shares held or power exercisable -
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by

virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

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

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

**PROJET DE LOI**

Entitled

**THE FINANCIAL SERVICES BUSINESS (ENFORCEMENT POWERS) (BAILIWICK OF  
GUERNSEY) LAW, 2020**

The States are asked to decide:-

Whether they are of the opinion to approve the Projet de Loi entitled "The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020", as amended in accordance with the Resolution of the States made on the 15<sup>th</sup> July, 2020, and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

**EXPLANATORY MEMORANDUM**

This Law makes provision in respect of –

- (a) the enforcement by the Guernsey Financial Services Commission of the provisions of this Law, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 and the supervisory Laws (the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and the Banking Supervision (Bailiwick of Guernsey) Law, 2020, the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002). The Law also subsumes the provisions of the Financial Services Commission Law relating to enforcement and the provisions of the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008,
- (b) the detection, investigation, prosecution and sanctioning (civil, criminal and administrative) of contraventions of the provisions of this Law, the Financial Services Commission Law and the supervisory Laws by persons carrying on regulated business, licensees and others, and
- (c) all other matters included therein,

thus ensuring so far as possible consistency and standardisation of the Commission's enforcement and investigative powers, obligations, liabilities, remedies, offences, penalties, sanctions and other consequences (criminal, civil and administrative) by placing them in a single enactment applicable across all regulated sectors of the finance industry, namely banking, investment, fiduciaries and insurance.

At their meeting of 15<sup>th</sup> July, 2020, the States resolved that the version of the Projet submitted for approval at that meeting should be amended to make the text of the Projet gender neutral. In accordance with that Resolution the text has been amended and is re-presented accordingly.



# PROJET DE LOI

ENTITLED

## **The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020**

### ARRANGEMENT OF SECTIONS

#### PART I INTRODUCTORY

1. Application of Law.
2. Meaning of "Financial Services Commission Law" and "supervisory Laws".
3. Meaning of "regulated business".
4. Meaning of "licensee".
5. Principles of conduct for licensees.

#### PART II INFORMATION GATHERING AND CONFIDENTIALITY

##### *Power of Commission to obtain information*

6. Persons to whom sections 7 and 8 apply.
7. Power to obtain information and documents.
8. Investigations by inspectors.
9. Investigation of suspected offences.
10. Meetings of Commission with auditors, actuaries, etc.
11. Investigations in support of relevant supervisory authorities.

##### *Warrants*

- 12. Power of Bailiff to grant warrant.
- 13. Powers conferred by Bailiff's warrant.

*General*

- 14. Other provisions as to notices and information.
- 15. Duties of confidentiality not broken by disclosure to regulators.
- 16. Disclosure of information to professional bodies, etc, for auditors and actuaries.
- 17. Legal professional privilege, liens and duties of confidentiality.
- 18. Falsification, etc, of documents during investigation.

*Disclosure of information*

- 19. Restrictions on disclosure of information.
- 20. Cases where disclosure is permitted.
- 21. Information supplied to Commission by relevant supervisory authority.
- 22. Royal Court to take Commission's undertakings into account.

PART III  
ENFORCEMENT POWERS OF THE COMMISSION

*Enforcement requirements*

- 23. Enforcement requirements.
- 24. Enforcement requirements in connection with revocation of licence, etc.

*Objections to existing holders of supervised roles, etc*

- 25. Objection to existing holders of supervised roles.
- 26. Contraventions by holders of supervised roles, etc.
- 27. Restrictions on sale of shares.

*Revocation, suspension and imposition of licences, etc*

- 28. Suspension of licence.
- 29. Revocation of licence.
- 30. Revocation or suspension of authorisation or registration.
- 31. Power to impose licence.
- 32. Disapplication of non-discretionary exemption.

#### *Prohibition orders*

- 33. Power to make prohibition orders.
- 34. List of prohibition orders.
- 35. Personal liability in case of breach of prohibition order.

#### *Other enforcement powers of the Commission*

- 36. Power to issue private reprimand.
- 37. Enforceable undertakings.
- 38. Public statements.
- 39. Discretionary financial penalties.
- 40. Administrative financial penalties.
- 41. Public announcements of enforcement proceedings.

#### *Disqualification orders against auditors and actuaries*

- 42. Disqualification orders of Commission against auditors.
- 43. List of disqualification orders against auditors.
- 44. Disqualification orders of Commission against actuaries.
- 45. List of disqualification orders against actuaries.

#### *Injunctions, restitution and other remedies*

- 46. Repayment of monies from unlawful business and restitution orders.
- 47. Injunctions to restrain unlawful business, etc.
- 48. General provisions as to receivers.

### **PART IV REGULATED BUSINESS DESCRIPTIONS AND NAMES**

- 49. Restrictions on use of certain descriptions and names.
- 50. Permission to use certain descriptions or names.
- 51. Commission may object to certain names.
- 52. Provisions as to notices under section 51.
- 53. Offences in relation to objections to names.
- 54. Incorporation and change of name of companies.
- 55. Applications by Commission for change of company name.

PART V  
MARKET ABUSE

*Market abuse, the code, and penalties*

- 56. Market abuse.
- 57. The code.
- 58. Provisions included in code by reference to City Code on Takeovers and Mergers.
- 59. Codes: procedure.
- 60. Effect of code.
- 61. Offences and penalties in cases of market abuse.
- 62. Effect on transactions.
- 63. Power to amend by Ordinance and extend scope by regulation.

*Assistance to relevant supervisory authorities*

- 64. Investigations etc. in support of relevant supervisory authority.

*Financial penalties and offences*

- 65. Powers of Royal Court to impose financial penalty for non-compliance.
- 66. Offences in relation to section 64.

*Powers to investigate criminal offences*

- 67. Powers of investigation.
- 68. Disclosure.
- 69. Delegation of functions of Her Majesty's Procureur.
- 70. Offences as to "tipping off".

PART VI  
DISSOLUTION OR WINDING UP OF LICENSEES, ETC

*Preliminary*

- 71. Application of this Part.

*Dissolution and winding up*

- 72. Deemed insolvency of insurer with general business.
- 73. Dissolution or winding up of licensed insurers which are Guernsey or Alderney companies, etc, on application of policyholders.
- 74. Dissolution or winding up on application of Commission.
- 75. Dissolution or winding up, etc. of insurer with long term business.
- 76. Continuation of long term business of insurer being dissolved or wound up, etc.
- 77. Reduction of contracts as alternative to dissolution or winding up of licensed insurer.

*Fraudulent trading and trust applications*

- 78. Responsibility for fraudulent trading disclosed in course of dissolution, winding up or administration.
- 79. Power to make applications under Trusts Law.

PART VII  
ADMINISTRATION AND INTERVENTION

*Interpretation*

- 80. Interpretation of Part VII.

*Administration*

- 81. Administration management orders.
- 82. Application for administration management order.
- 83. Effect of application for administration management order.
- 84. Effect of administration management order.
- 85. Notice of administration management order to appear in correspondence, etc.
- 86. General powers of administration manager.
- 87. General duties of administration manager.
- 88. Co-operation with and by administration manager.
- 89. Discharge or variation of administration management order.
- 90. Remuneration, and swearing in, of administration manager.
- 91. Vacation of office.
- 92. Release of administration manager.
- 93. Information to be given by administration manager.
- 94. Statement of affairs to be submitted to administration manager.

- 95. Protection of interests of customers, etc.
- 96. Administration of incorporated cell company not to prejudice its incorporated cells.
- 97. Cells of protected cell companies: administration subject to liquidation.
- 98. Remedy against delinquent persons.

*Intervention*

- 99. Injunctions.

*Administration and intervention:  
general provisions*

- 100. Powers of administration manager.
- 101. Applications to court under Companies Law.
- 102. Administration and intervention - Ordinances.

PART VIII  
THE DECISION-MAKING PROCESS AND APPEALS

*Representations and notice of decisions, etc*

- 103. Representations concerning proposed decisions of Commission.
- 104. Notice of decisions of Commission.
- 105. Disclosure of reasons for decisions of Commission.

*Appeals*

- 106. Appeals to Royal Court against decisions of Commission.
- 107. Appeals from Royal Court to Court of Appeal.
- 108. Restriction on successive challenges.

PART IX  
CRIMINAL PROCEEDINGS

- 109. Offences as to false or misleading information, and withholding information, etc.
- 110. Misleading statements and practices - controlled investments.
- 111. Fraudulent intent and concealment of documents, etc.
- 112. Penalties.

- 113. Criminal proceedings against unincorporated bodies.
- 114. Criminal liability of directors, etc.
- 115. Defence of due diligence.
- 116. Jurisdiction.

## PART X PROTECTED DISCLOSURES (WHISTLEBLOWING)

- 117. Power to enact Ordinances.
- 118. Application to Alderney and Sark.

## PART XI GENERAL PROVISIONS

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

- 119. Power to make rules for purposes of Law and as to enforcement practice and procedure.
- 120. Power to issue codes of practice and guidance.

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

- 121. Ordinances, regulations, rules, codes and guidance, etc - general.
- 122. Regulations: consultation with Committees and Commission and laying before the States.
- 123. Publication of regulations, rules, codes and guidance, etc.
- 124. Making and effect of contravention of rules.
- 125. Regulations and rules are statutory instruments.
- 126. Power to adapt rules, codes and guidance, etc, under this Law.

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

- 127. Exclusion of liability.

### *Miscellaneous*

- 128. Commission to have regard to guidance, etc, under FSC Law and other matters.
- 129. Fees, interest and penalties, and recovery thereof.
- 130. Service of notices and documents.

- 131. Documents to be submitted in electronic form and by electronic means.
- 132. Verification of information.
- 133. Evidence.
- 134. Provision as to publication of notices in Alderney and Sark and on Commission's website.
- 135. Power to rectify publications.
- 136. Exercise of powers is without prejudice to other provisions.
- 137. General interpretation.
- 138. Construction of references to the production of information.
- 139. Repeals and amendments.
- 140. Savings and transitional provisions.
- 141. Citation.
- 142. Commencement.

## SCHEDULES

### SCHEDULE 1: GLOSSARY OF EXPRESSIONS

### SCHEDULE 2: REPEALS AND AMENDMENTS

### SCHEDULE 3: MEANING OF "HOLDING COMPANY" AND SUBSIDIARY COMPANY"



# PROJET DE LOI

ENTITLED

## **The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020**

**THE STATES**, in pursuance of their Resolutions of the 30<sup>th</sup> day of October, 2015<sup>a</sup> and the 27<sup>th</sup> November, 2015<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### INTRODUCTORY

#### **Application of Law.**

1. This Law makes provision in respect of -
  - (a) the enforcement by the Guernsey Financial Services Commission ("**the Commission**") of the provisions of this

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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.

Law, the Financial Services Commission Law and the supervisory Laws,

- (b) the detection, investigation, prosecution and sanctioning (civil, criminal and administrative) of contraventions of the provisions of this Law, the Financial Services Commission Law and the supervisory Laws by persons carrying on regulated business, licensees and others, and
- (c) all other matters included herein.

**Meaning of "Financial Services Commission Law" and "supervisory Laws".**

2. In this Law -

- (a) the **"Financial Services Commission Law"** means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>c</sup>, and
- (b) **"the supervisory Laws"** means -
  - (i) the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>d</sup> (**"the Protection of Investors Law"**),

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

<sup>d</sup> Approved by the States of Deliberation on the \*\* August, 2020.

- (ii) the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>e</sup> ("**the Banking Supervision Law**"),
- (iii) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>f</sup> ("**the Regulation of Fiduciaries Law**"),
- (iv) the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>g</sup> ("**the Insurance Business Law**"),
- (v) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>h</sup> ("**the Insurance Managers and Intermediaries Law**"), and
- (vi) any other enactment specified by the States by Ordinance.

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<sup>e</sup> Approved by the States of Deliberation on the \*\* August, 2020.

<sup>f</sup> Approved by the States of Deliberation on the \*\* August, 2020.

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

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

**Meaning of "regulated business".**

3. In this Law "**regulated business**" means business -
- (a) which by virtue of the provisions of the supervisory Laws may not lawfully be carried on except -
    - (i) under the authority and in accordance with the conditions of a licence granted by the Commission under the provisions of those Laws,
    - (ii) by persons exempted by the provisions of those Laws from the requirement to be licensed thereunder, or
    - (iii) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing thereunder, and
  - (b) of any other class or description specified by regulations of the Policy and Resources Committee.

**Meaning of "licensee".**

4. In this Law a "**licensee**" means -
- (a) a licensee within the meaning of the Protection of Investors

Law (that is, a person who holds a licence to carry on controlled investment business under that Law),

- (b) 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), referred to in this Law as a licensed banking institution,
- (c) a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law (that is, a person who holds a fiduciary licence under that Law), referred to in this Law as a licensed fiduciary,
- (d) a licensee within the meaning of the Insurance Business Law (that is, a person who is a licensed insurer under that Law), referred to in this Law as a licensed insurer,
- (e) a licensee within the meaning of the Insurance Managers and Intermediaries Law (that is, a person who is a licensed insurance manager or a licensed insurance intermediary under that Law), respectively referred to in this Law as a licensed insurance manager and a licensed insurance intermediary,
- (f) a person of any other class or description specified by regulations of the Policy and Resources Committee,

and see also sections 31(2)) (in respect of persons on whom a licence is imposed under section 31) and 42(6) (in respect of sections 36 to 45).

**Principles of conduct for licensees.**

5. (1) A licensee 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 regulated business in relation to which it is acting as licensee, 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.

PART II

INFORMATION GATHERING AND CONFIDENTIALITY

*Power of Commission to obtain information*

**Persons to whom sections 7 and 8 apply.**

6. (1) In sections 7 and 8 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensee,
- (b) an authorised or registered collective investment scheme,

- (c) an applicant for -
  - (i) a licence, or
  - (ii) a declaration that a collective investment scheme is an authorised or registered collective investment scheme,
- (d) a former licensee, but subject to the provisions of subsection (2),
- (e) a former authorised or registered collective investment scheme, but subject to the provisions of subsection (2),
- (f) a person carrying on any class or description of regulated business -
  - (i) who is exempted by the provisions of the supervisory Laws from the requirement to be licensed thereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing thereunder,

in respect of that class or description of business,

- (g) a person other than a person mentioned in paragraph (a), (b), (c) or (f) carrying on any class or description of regulated business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (h) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,
- (i) an officer, designated administrator or designated trustee or custodian of -
  - (i) an authorised or registered collective investment scheme or former authorised or registered collective investment scheme, or
  - (ii) an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme,
- (j) where a person (person A) who is a relevant person by virtue of paragraph (h) or (i) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, person A,



- (k) an administered person (within the meaning of section 80),
- (l) 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,

(m) a 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 apart from paragraph (b) (authorised or registered collective investment schemes), 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),

- (n) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

- (o) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (p) 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),
- (q) 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,
- (r) a person who is a partner (or a general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership) in a relevant person specified in any other paragraph of this subsection, where that relevant person is a partnership or limited liability partnership,
- (s) 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),
- (t) 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 regulated business, including, without limitation, a person who is an auditor of a relevant person so specified, or

(u) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Policy and Resources Committee.

(2) The provisions of sections 7 and 8 apply in relation to a former licensee or former authorised or registered collective investment scheme only for a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be), 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 7 or 8 are exercised in respect of a former licensee or former authorised or registered collective investment scheme within that six year period, they may continue to be exercised in respect of that former licensee or former authorised or registered collective investment scheme after the expiration of that period.

(3) The provisions of sections 7 and 8 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 7 or 8 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 licensee or former authorised or registered collective investment scheme.

(4) For the avoidance of doubt, if the powers conferred by section 7 or 8 are exercised in respect of a licensee, authorised or registered collective investment scheme 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, authorisation or registration, 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 7 or 8 may be exercised in relation to a person or entity referred to in subsection (1)(m), an associated party referred to in subsection (1)(n), a group entity referred to in subsection (1)(o), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(p) or a company referred to in subsection (1)(s) only -

- (a) where it appears necessary or desirable to the Commission to do so -
  - (i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or
  - (ii) for the purpose of the performance of its functions, and

- (b) with the prior written authority of not less than two ordinary members of the Commission.

**Power to obtain information and documents.**

7. (1) The Commission may, by notice in writing served on a relevant person within the meaning of section 6, require the relevant person to provide the Commission -

- (a) in such form and manner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions,
- (b) with a report, in such form and manner as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on or on any aspect of any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may, by notice in writing served on a relevant person -

- (a) require the relevant person to produce, in such form and manner, within such time and at such place as may be specified in the notice, such documents or documents of

such description as may be so specified,

- (b) require the relevant person to furnish, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents or information and documents of such description as the officer, servant or agent may specify, either immediately or within such time, and at such place, and in such form and manner, as may be so specified,

being information or documents reasonably required by the Commission for the purpose of the performance of its functions.

(3) Where under subsection (1) or (2) the Commission or any officer, servant or agent thereof has power to require the production of any information or documents from a relevant person, the Commission or that officer, servant or agent has the like power to require the production of the information or documents from any person or entity who appears to be in possession of them (but without prejudice to any lien claimed by such a person or entity on any documents produced).

(4) The powers conferred by or under the provisions of this section to require a person to produce any documents include 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) except where that person is a licensee who holds only a personal fiduciary licence, 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, and in addition, where that person is an authorised or registered collective investment scheme, any officer, designated administrator or designated trustee or custodian thereof,

to attend at such time and place as may be required and to give an explanation of and to answer questions relating to them or anything in them, and

- (b) if 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) The Commission may, by notice in writing served on a relevant person, require the relevant person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matter or any aspect of any matter in relation to which the Commission may require the production of information or documents under subsection (1) or (2).

(6) For the avoidance of doubt and without limitation, the powers conferred by this section may be exercised for the purpose of determining whether, having regard to the applicable minimum criteria for licensing, a person who is or is to be the holder of any position, interest or role in respect of a licensee or other class or description of relevant person is or continues to be a fit and proper person to hold the position, interest or role.

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

(8) 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 (7) or section 109(1) (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.

**Investigations by inspectors.**

8. (1) The Commission may, in relation to a relevant person within the meaning of section 6, 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 one or more competent persons ("**inspectors**") to investigate and report to the Commission on -

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

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

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

(2) An inspector may also, if the inspector thinks it necessary to do so for the purposes of the investigation, subject to the provisions of subsection (3), investigate the business of any party -

(a) who is or has at any relevant time been an associated party of the relevant person under investigation, or

(b) of which a partner (or a general partner, in the case of a limited partnership or member, in the case of a limited liability partnership) in the relevant person under investigation is or has at any relevant time been a controller (where the relevant person is a partnership or limited liability partnership).

(3) An inspector may not investigate the business of a party under subsection (2) unless and until the Commission has given notice in writing to that party of the proposed investigation.

(4) A relevant person or party being investigated under subsection (1) or (2) and any person described in subsection (5) -

(a) shall produce to an inspector, at such time and place and in such form and manner as the inspector may require, all documents -

(i) which are in the custody or power of that relevant person, party or person so described, and

(ii) which relate to that relevant person or party;

and the inspector may take copies of or extracts from any documents produced under this paragraph,

- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions and give such explanations as the inspector may put to or require of that relevant person, party or person so described in relation to that relevant person or party, and
  - (c) otherwise shall give an inspector all assistance in connection with the investigation which that relevant person, party or person so described is reasonably able to give.
- (5) The persons referred to in subsection (4) are -
  - (a) a person who is or has been the holder of a supervised role in respect of, or an employee, partner, significant shareholder, agent, banker, auditor, actuary, advocate or other legal adviser of, a relevant person or party being investigated under subsection (1) or (2),
  - (b) a person appointed as a skilled person pursuant to the provisions of the supervisory Laws in respect of such a relevant person or party,
  - (c) a person appointed to make a report under section 7(1)(b) or this section of this Law, section 3(3)(a) of the Protection of Investors Law, section 5(5)(a) of the Banking Supervision

Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such a relevant person or party, and

- (d) in the case of an authorised or registered collective investment scheme, a person who is or has been an officer, designated administrator or designated trustee or custodian of the scheme.

(6) An inspector shall, if so required, produce evidence of his or her authority.

(7) A person who without reasonable excuse -

- (a) contravenes any provision of subsection (4), or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any power conferred by this section,

is guilty of an offence.

(8) 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 (7) or section 109(1) (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.

(9) Subject to the provisions of subsection (10), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the relevant 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 relevant person as a civil debt.

(10) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a relevant 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.

(11) No liability is incurred by an inspector 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 inspector's own fraud, wilful misconduct or gross



negligence.

**Investigation of suspected offences.**

9. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under the provisions of section 1(4) of the Protection of Investors Law, section 1 or 8 of the Banking Supervision Law, section 1 or 8 of the Regulation of Fiduciaries Law, section 1, 3, 4 or 12 of the Insurance Business Law, section 1, 2 or 7 of the Insurance Managers and Intermediaries Law or section 49, 109, 110 or 111 of this Law, the Commission may by notice in writing require that person or any other person -

- (a) to furnish, at such place and in such form and manner as may be specified in the notice and either immediately or at such time as may be so specified, such information, documents or class or description of information or documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence,
- (b) to attend at such time and place as may be specified in the notice and to answer questions and give explanations relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his or her authority -

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1),
- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of that person's knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice under subsection (1) or obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any power conferred by subsection (2) is guilty of an offence.

(4) 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 (3) or section 109(1) (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.

**Meetings of Commission with auditors, actuaries, etc.**

- 10. (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 require that a meeting be held, at such time, place and for such purposes as the Commission may specify, with the auditors, actuaries, designated administrators, designated trustees or custodians, associated parties or officers of, or holders of supervised roles in respect of -

- (i) a licensee or former licensee, or
- (ii) an authorised or registered collective investment scheme or former authorised or registered collective investment scheme,

("the client") at which the Commission may discuss any aspect of the operation, regulation, licensing, authorisation or registration of the client, and it is the duty of any person upon whom such a notice is served to comply with its requirements.

(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 require the provision of such information and documents, in such form, and
- (b) may put such questions and require 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 required, arranged and conducted, and other requirements may be imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

(5) 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 section 109(1) (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.

**Investigations in support of relevant supervisory authorities.**

11. (1) Any relevant power conferred on the Commission by or under an enactment may, at the request of a relevant supervisory authority (the "**requesting authority**"), be exercised by the Commission -

- (a) in relation to a licensee or an authorised or registered

collective investment scheme, and

- (b) with the prior authority of two of its members, in relation to a person who is not a licensee or an authorised or registered collective investment scheme,

for the purpose of enabling or assisting, in the interests of the public or the reputation of the Bailiwick as a finance centre, the requesting authority to perform any of its functions; and the provisions of the enactment shall have effect accordingly.

(2) In deciding whether or not to exercise any power by virtue of subsection (1), the Commission shall take into account in particular -

- (a) whether, except where the requesting authority is a self-regulatory organisation, in the jurisdiction of the requesting authority, corresponding assistance would be given to the Commission,
- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick,
- (c) the seriousness of the case and its importance to persons in the Bailiwick,

(d) whether the disclosure of information to or co-operation with the requesting authority would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question, and

(e) whether it is otherwise necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to give the assistance sought.

(3) The Commission may decide that it will not exercise any power by virtue of subsection (1) unless the requesting authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(4) Where the Commission decides to exercise any power by virtue of subsection (1), it may permit, or it may direct any inspector or other competent or skilled person appointed or required to be appointed by it to permit, a representative of the requesting authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) A direction shall not be given under subsection (4) unless in the opinion of the Commission any information obtained by the requesting authority as a result of the interview will be subject to safeguards as to confidentiality equivalent to those contained in section 21(1) and (2) of the Financial Services Commission Law.

(6) The Commission may prepare a statement of its policy in respect



of the conduct of interviews in relation to which a direction has been given under subsection (4).

(7) A statement of policy under subsection (6) shall be published in such manner as the Commission considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general, subject to such charges (if any) as the Commission may decide to levy to cover the costs of publication.

(8) No direction may be given under subsection (4) before the statement of policy has been published.

(9) In this section -

**"relevant power"** means any power -

- (a) to make site visits,
- (b) to require the provision, production and verification of information and reports and other documents,
- (c) to take copies of or extracts from documents and require an explanation of them or a statement of their whereabouts,
- (d) to appoint or require the appointment of inspectors or other competent or skilled persons,

- (e) to put questions and require explanations,
- (f) to conduct investigations and make reports, and
- (g) to require the attendance or assistance of any person,

and any other power specified, or of a class or description specified, by Ordinance of the States,

**"requesting authority"** : see subsection (1).

#### *Warrants*

#### **Power of Bailiff to grant warrant.**

12. (1) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath -

- (a) that a notice has been served under the provisions of section 7 of this Law, section 33 of the Protection of Investors Law, section 28 of the Banking Supervision Law, section 26 of the Regulation of Fiduciaries Law, section 68 of the Insurance Business Law or section 45 of the Insurance Managers and Intermediaries Law (the **"section in question"**) on any person and that there are reasonable grounds for suspecting -

- (i) that there has been a failure to comply with any requirement imposed by or under the notice,
  - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under the provisions of the section in question, or
  - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii),
- (b) that it is not practicable to serve a notice under the provisions of the section in question, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
- (i) it would not be complied with,
  - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
  - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 13.

(2) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath that the Commission has appointed inspectors under the provisions of section 8 to carry out an investigation under that section, and that there are reasonable grounds for suspecting -

- (a) that an offence under the provisions of this Law or the supervisory Laws has been committed in relation to the investigation,
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation, or
- (c) that, if a warrant were not granted -
  - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed, or
  - (ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 13.

(3) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under the provisions of section 1(4) of the Protection of Investors

Law, section 1 or 8 of the Banking Supervision Law, section 1 or 8 of the Regulation of Fiduciaries Law, section 1, 3, 4 or 12 of the Insurance Business Law, section 1, 2 or 7 of the Insurance Managers and Intermediaries Law or section 49, 109, 110 or 111 of this Law, and that -

- (a) a person has failed to comply with any requirement of a notice under the provisions of section 9(1) or any other requirement imposed by or under the provisions of section 9,
- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice or requirement,
- (c) it is not practicable to serve a notice under the provisions of section 9(1), or
- (d) there are reasonable grounds for suspecting that if such a notice were served -
  - (i) it would not be complied with,
  - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
  - (iii) the service of the notice might seriously prejudice

the investigation of the suspected offences,

he may grant a warrant conferring the powers set out in section 13.

- (4) In this section the expression "**Bailiff**" includes -
  - (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he or she is unavailable, a Jurat thereof,
  - (b) where the warrant is to be executed in Sark, the Seneschal.

**Powers conferred by Bailiff's warrant.**

**13.** (1) A warrant granted under the provisions of section 12(1) authorises any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -
  - (i) which are occupied by the person upon whom the notice under the provisions of the section in question was or could be served,
  - (ii) upon which the documents to which the notice under the provisions of the section in question

relates are reasonably believed to be, or

- (iii) where no notice under the provisions of the section in question has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents -
  - (i) which were required by the notice under the provisions of the section in question, or
  - (ii) where no notice under the provisions of the section in question has been served, which are of a class or description specified in the warrant and which could have been required by a notice under the provisions of the section in question,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions or give any explanations which could have been put to or required of that person under the provisions of the section in question,

(ii) to state to the best of that person's knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(2) A warrant granted under the provisions of section 12(2) authorises any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant, being premises -

(i) which are occupied by the relevant person or any other person being investigated by inspectors under the provisions of section 8, or

(ii) upon which any documents to which the



investigation under the provisions of section 8  
relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under the provisions of section 8, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant -
  - (i) to answer any questions or give any explanations relevant to the investigation under the provisions of section 8,
  - (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents described in paragraph (b),
  - (iii) to make an explanation of any such documents.

(3) A warrant granted under the provisions of section 12(3) authorises any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant, being premises -

(i) which are occupied by the person upon whom the notice under the provisions of section 9(1) was served,

(ii) upon which the documents to which the notice under the provisions of section 9(1) relates are reasonably believed to be, or

(iii) where no notice under the provisions of section 9(1) has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for

preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant -
  - (i) to answer questions or give explanations relevant for determining whether that person or any other person has committed an offence under section 1(4) of the Protection of Investors Law, section 1 or 8 of the Banking Supervision Law, section 1 or 8 of the Regulation of Fiduciaries Law, section 1, 3, 4 or 12 of the Insurance Business Law, section 1, 2 or 7 of the Insurance Managers and Intermediaries Law or section 49, 109, 110 or 111 of this Law,
  - (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents described in paragraph (b),
  - (iii) to make an explanation of any such documents.

(4) A warrant granted under the provisions of section 12 ceases to be valid on the expiration of a period of 28 days immediately following the day on which it was issued.

(5) Any documents of which possession is taken under the powers conferred by a warrant granted under the provisions of section 12 may be retained -

- (a) for a period of three months or such longer period as the Bailiff (within the meaning of section 12(4)) may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(6) A person who without reasonable excuse obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any power conferred by a warrant granted under the provisions of section 12 is guilty of an offence.

(7) A statement made by a person ("A") in response to a requirement imposed by or under section 12 or a warrant granted under it -

- (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 (6) or section 109(1) (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.

*General*

**Other provisions as to notices and information.**

**14.** (1) The Commission may direct a person to whom a notice is given or on whom a requirement is imposed under the provisions of section 7, 8, 9 or 10 of this Law or section 33 of the Protection of Investors Law, section 28 of the Banking Supervision

Law, section 26 of the Regulation of Fiduciaries Law, section 68 of the Insurance Business Law or section 45 of the Insurance Managers and Intermediaries Law that that person must not, for such period (which may be indefinite) as the Commission may specify -

- (a) inform, or cause or permit to be informed, any person, or any person of such class or description as the Commission may specify -

- (i) that the notice has been given or the requirement imposed,

- (ii) of the fact or content of the notice or requirement or of any meeting pursuant to the provisions of those sections, or

- (iii) of anything said, disclosed or otherwise done or omitted to be done pursuant to such a notice, requirement or meeting, or

- (b) disclose, or cause or permit to be disclosed, to any person (including, without limitation, a licensee or client) any information or matter which is likely to prejudice -

- (i) the inquiry or investigation to which the notice or requirement relates, or

(ii) the performance by the Commission of its functions,

and a person ("A") who fails to comply with such a direction 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;

and, for the avoidance of doubt, the institution and prosecution of an appeal under section 106 or under the corresponding provisions of the supervisory Laws against the decision of the Commission to give the notice or impose the requirement referred to in this subsection does not of itself constitute a failure to comply with a direction under this subsection.

(2) Any obligation imposed by statute, contract or otherwise requiring a person to whom a notice is given or on whom a requirement is imposed under the provisions of section 7, 8, 9 or 10 of this Law or section 33 of the Protection of Investors Law, section 28 of the Banking Supervision Law, section 26 of the Regulation of

Fiduciaries Law, section 68 of the Insurance Business Law or section 45 of the Insurance Managers and Intermediaries Law -

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

(i) agreeing to, arranging or conducting a meeting pursuant to the notice or requirement, or

(ii) complying with the notice or requirement, or

(b) to inform another person -

(i) that such a notice has been given or such a requirement imposed,

(ii) of the fact or content of such a notice or requirement or of any meeting pursuant to the provisions of those sections, or

(iii) of anything said, disclosed or otherwise done or omitted to be done pursuant to such a notice, requirement or meeting,

is of no effect.

(3) A person to whom a notice is given or on whom a requirement is



imposed by or under the provisions of section 7, 8, 9 or 10 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 notice or 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.

(4) Any power conferred on the Commission or its officers, servants or agents by or under the provisions of section 7, 8, 9 or 10 of this Law or section 33 of the Protection of Investors Law, section 28 of the Banking Supervision Law, section 26 of the Regulation of Fiduciaries Law, section 68 of the Insurance Business Law or section 45 of the Insurance Managers and Intermediaries Law may (without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey Law, 1991<sup>i</sup> or any other power of the Commission to delegate the performance of any of its functions) be exercised, subject to such terms and conditions as the Commission thinks fit, by any person appointed in that behalf by the Commission; and the provisions of section 4(2), (3), (4) and (5) of that Law apply in relation to any such appointment as they apply in relation to an arrangement referred to in that section.

(5) Any document or information provided to the Commission under the powers conferred by the provisions of the Supervisory Laws may (without limitation, and without prejudice to any other power so to disclose or otherwise use the document or information) be disclosed or otherwise used by the Commission for the purposes of the

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<sup>i</sup> Ordres en Conseil Vol. XXXIII, p. 478.

performance of its functions under the provisions of this Law.

**Duties of confidentiality not broken by disclosure to regulators.**

15. (1) Subject to the provisions of subsection (2), no obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure of information to the Commission or to any relevant supervisory authority for the purpose of enabling or assisting the Commission or, as the case may be, that authority to perform any of its functions.

(2) Subsection (1) does not apply in relation to the disclosure by the Commission and by its members, officers and servants of any information referred to in section 19, but this is without prejudice to the provisions of section 20.

**Disclosure of information to professional bodies, etc, for auditors and actuaries.**

16. If it appears to the Commission that an auditor or actuary has failed to comply with a duty imposed by any of the provisions of this Law, the Financial Services Commission Law, the supervisory Laws or any other enactment, the Commission may report the auditor or actuary to any authority, institution or professional body to whose rules or requirements the auditor or actuary is subject, and may (without prejudice to any other power conferred on the Commission by the provisions of any other enactment) disclose any document or information with a view to the institution of disciplinary proceedings or otherwise for the purposes of such proceedings.

**Legal professional privilege, liens and duties of confidentiality.**

17. (1) Nothing in -

(a) the provisions of section 7, 8, 9 or 10, or

(b) a warrant granted under the provisions of section 12,

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 a client.

(2) Where a person claims a lien on a document, its production under

-

(a) the provisions of section 7, 8, 9 or 10, or

(b) a warrant granted under the provisions of section 12,

is without prejudice to the lien.

(3) A requirement imposed by or under -

(a) the provisions of section 7, 8, 9 or 10, or

(b) a warrant granted under the provisions of section 12,

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.

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

18. A person ("A") upon whom a notice under the provisions of section 7, 8, 9 or 10 has been served or who knows or has reasonable grounds to suspect -

- (a) that such a notice is likely to be served on A, or
- (b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 7, 8, 9 or 10,

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

- (i) are or would be specified in such a notice, 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.

## *Disclosure of Information*

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

19. (1) Subject to the provisions of section 20 -

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

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

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

### **Cases where disclosure is permitted.**

20. Section 19 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 the Insurance Business Law for the purposes of a scheme for the protection of customers,

to perform its functions,

- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of -

- (i) a licensee or former licensee, or
- (ii) an authorised or registered collective investment

scheme or former authorised or registered collective investment scheme,

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) a licensee or former licensee, or
- (B) an authorised or registered collective investment scheme or former authorised or registered collective investment scheme,
- (ii) a person appointed to make a report under section 7(1)(b) or 8 of this Law, section 3(3)(a) of the Protection of Investors Law, section 5(5)(a) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or
- (iii) a person appointed as a skilled person pursuant to the provisions of the supervisory Laws,
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of -
  - (i) information obtained under the provisions of -
    - (A) sections 7 to 13 of this Law, or

- (B) section 33 or 38 of the Protection of Investors Law or the corresponding provisions of the other supervisory Laws, or
- (ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or entity responsible for a scheme for compensating customers (whether in the Bailiwick or elsewhere) -
  - (i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to perform its functions, and
  - (ii) if the recipient has given to the Commission a written undertaking that the information will not be

further disclosed without the prior consent of the Commission,

(n) the disclosure of information by the Commission for the purposes or in the circumstances described in -

(i) section 21(2) of the Financial Services Commission Law,

(ii) section 49 of the Protection of Investors Law,

(iii) section 45 of the Banking Supervision Law,

(iv) section 39 of the Regulation of Fiduciaries Law,

(v) section 80 of the Insurance Business Law, or

(vi) section 57 of the Insurance Managers and Intermediaries Law,

(o) the disclosure of information for the purpose of enabling or assisting -

(i) the Registrar of Companies,

(ii) the Alderney Registrar,

- (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),
- (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
- (v) the Principal Ombudsman appointed under section 4 of that Law,
- (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),
- (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),
- (viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or

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

to perform their respective functions.

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

21. (1) This section applies, to the exclusion of section 19, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) -

- (a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,
- (b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and
- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

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

(a) the name of any person to whom it proposes to disclose the information, and

(b) an accurate description of that person's functions.

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

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

(a) for the purposes or in the circumstances described in section 20(h), or

(b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

- (a) receives information described in subsection (1) from the Commission, or
- (b) obtains any such information directly or indirectly from a person who has so received it,

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

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

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

22. 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, the Financial Services Commission Law or the supervisory Laws (whether pursuant to those provisions or otherwise) -

- (a) take into account -
  - (i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to which the

Commission is subject in respect of the information,

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

### PART III

## ENFORCEMENT POWERS OF THE COMMISSION

### *Enforcement requirements*



**Enforcement requirements.**

23. (1) The Commission may, at any time, by notice in writing, impose such requirements ("**enforcement requirements**") on any person referred to in subsection (2), requiring that 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) Enforcement requirements may be imposed on -

- (a) a licensee,
- (b) an authorised or registered collective investment scheme,
- (c) subject to subsection (5), a former licensee or former authorised or registered collective investment scheme,
- (d) a person carrying on any class or description of regulated business -
  - (i) who is exempted by the provisions of the supervisory Laws from the requirement to be licensed thereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing thereunder,

in respect of that class or description of business,

- (e) 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 (d),
- (f) a person who is the holder of a supervised role in respect of, or is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,
- (g) a person who has or is reasonably suspected of having contravened -
  - (i) any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

- (h) an ancillary vehicle of a person or entity specified in any other paragraph of this subsection, 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 Policy and Resources Committee,

(the "**accountable person**").

(3) The Commission may vary or rescind an enforcement requirement by notice in writing served on the accountable person.

(4) Without prejudice to the generality of subsection (1), enforcement requirements may -

- (a) require the accountable person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) prohibit or impose limitations on the acceptance or carrying on of regulated business and other business, or on the acceptance or repayment of deposits, the granting of credit or the making of investments,

- (c) prohibit, restrict or impose limitations on the acceptance or carrying on of regulated business, or any class or description of regulated business, in or from within any place, or any particular place, outside the Bailiwick -
  - (i) by the accountable person,
  - (ii) by any undertaking established by the accountable person (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (d) prohibit the accountable person from soliciting (whether at all or in any specified manner) regulated business and other business, either generally or from specified persons or classes or descriptions of persons,
- (e) prohibit the accountable person from entering into any other transaction or class or description of transactions,
- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee,

auditor or actuary of, the accountable person,

- (g) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,
- (h) specify requirements to be fulfilled otherwise than by action taken by the accountable person,
- (i) 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,
- (j) require the accountable person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensed banking institution or person of such other class or description as may be specified in the enforcement requirement, assets of such value and description as may be so specified; and any such requirement may provide that -

- (i) assets kept in the custody of a trustee, custodian, licensed banking institution or other person pursuant to the enforcement requirement shall not, so long as the enforcement requirement 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>j</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 accountable person in contravention of the enforcement requirement shall be ineffective against any claim by any liquidator of that person,

and an enforcement requirement imposed by virtue of this paragraph shall be effective in law against or (as the case may require) for the benefit of third parties

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

notwithstanding any rule of law to the contrary,

- (k) where the accountable person is a licensee within the meaning of the Protection of Investors Law, and without prejudice to paragraph (j), require the accountable person to take all necessary steps to transfer to a trustee, custodian, 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 accountable person, or
  - (ii) are held by or to the order of the accountable person and either belong to investors or clients or belong to -
    - (A) an investment company the shares in which belong to investors or clients, or
    - (B) some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by investors or clients,
- (l) require an actuarial investigation into the technical reserves of the accountable person,

- (m) where the accountable person is a licensed insurer, require the insurer to establish and maintain technical reserves, on whatever basis the Commission determines prudent, over and above those required by Recognised Accounting Standards,
- (n) specify requirements as to the capital resources, liquidity and assets of the business of the accountable person,
- (o) where the accountable person is a licensed insurance manager, permit the accountable person to act in or from within the Bailiwick as an insurance manager only in respect of the insurer or insurers specified in the enforcement requirement,
- (p) require the accountable person to provide evidence of -
  - (i) compliance with -
    - (A) the provisions of this Law, the Financial Services Commission Law or the supervisory 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 accountable person or, except in the case of a person who is a licensee who holds only a personal fiduciary licence, any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the accountable person),

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

- (q) where a notice of revocation or proposed revocation of licence has been issued to the accountable person, require that person to take all reasonable steps to procure the transfer of all or any of its customers to another licensee acceptable to the Commission,
- (r) require the accountable person to prepare consolidated accounts (in addition to any accounts required to be prepared by virtue of the provisions of the supervisory Laws),

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

(5) An enforcement requirement may be imposed on a former licensee or former authorised or registered collective investment scheme only within a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be), 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, an enforcement requirement imposed on a former licensee or former authorised or registered collective investment scheme within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

(6) An enforcement requirement may be imposed on a person or entity which has at any time been or been deemed to be an accountable person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is currently an accountable 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 an accountable 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, an enforcement requirement imposed on a person or entity which has at any time been or been deemed to be an accountable 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 or former authorised or registered collective investment scheme.

(7) An enforcement requirement 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, or
- (b) such prohibitions, restrictions, requirements or conditions

as may be so specified are complied with, or

- (c) rescinded by the Commission, if earlier.

For the avoidance of doubt, an enforcement requirement imposed on a licensee, authorised or registered collective investment scheme or other person or entity of a class or description of accountable person referred to in subsection (2) may remain in force after -

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

(8) A person who contravenes any provision of an enforcement requirement is guilty of an offence.

(9) Where the accountable person is a licensee or an authorised or registered collective investment scheme, the fact that an enforcement requirement has been contravened is, whether or not constituting an offence under subsection (8), a ground for the suspension or revocation of the licence, authorisation or registration in question (see sections 28, 29 and 30) but does not of itself invalidate any contract or transaction.

(10) In considering whether or not to impose, vary or rescind any enforcement requirement the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of -

- (a) the applicable supervisory Law or section 29 or 30 of this Law when considering whether or not to grant an application for, or (as the case may be) to revoke, a licence, authorisation or registration, or
- (b) section 33 when considering whether or not to make or renew a prohibition order.

(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 an enforcement requirement and the date from which any such requirement, 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.

**Enforcement requirements in connection with revocation of licence, etc.**

24. Without prejudice to the generality of section 23, and for the avoidance of doubt, enforcement requirements may be imposed by the Commission under the

provisions of that section -

- (a) when serving notice by virtue of section 28, 29 or 30 upon a licensee or collective investment scheme that the Commission is proposing or has decided to suspend or revoke its licence, authorisation or registration (as the case may be),
- (b) at any time after such a notice has been served (whether before or after the licence, authorisation or registration is suspended or revoked),
- (c) at any time after a licensee or authorised or registered collective investment scheme has served a notice under the provisions of the supervisory Laws surrendering, or requesting the suspension of, its licence, authorisation or registration (whether or not with immediate effect and whether or not the Commission has, where necessary, consented to the surrender or suspended the licence, authorisation or registration under those provisions), or
- (d) in the case of a licensee or authorised or registered collective investment scheme whose licence, authorisation or registration is subject to a condition as to its duration, upon the expiry of the licence, authorisation or registration or at any time thereafter.

*Objections to existing holders of supervised roles, etc*

**Objection to existing holders of supervised roles.**

25. (1) Where in the opinion of the Commission, having regard to the applicable minimum criteria for licensing, a person who is the holder of an approved supervised role or vetted supervised role in respect of a licensee is not or is no longer a fit and proper person to hold such a role, the Commission may serve that person with a written notice of objection.

(2) Subsection (1) applies in relation to a licensed banking institution only where the institution is a Guernsey company, a Guernsey foundation, a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality or an Alderney company.

(3) The States may by Ordinance amend this section so as to extend its application, subject to such exceptions, adaptations and modifications as the States think fit, to -

- (a) authorised and registered collective investment schemes or other persons or entities, and
- (b) the holders of supervised roles in respect of them or officers or employees, or designated administrators or designated trustees or custodians, of them.

**Contraventions by holders of supervised roles, etc.**

26. (1) A person ("A") who -
- (a) becomes -
    - (i) the holder of an approved supervised role or vetted supervised role, or
    - (ii) the holder of an additional controller holding,in contravention of the provisions of the supervisory Laws,  
or
  - (b) becomes or continues to be -
    - (i) the holder of an approved supervised role or vetted supervised role, or
    - (ii) the holder of an additional controller holding,after a notice of objection has been served on A under the provisions of the supervisory Laws or section 25,

is guilty of an offence unless A shows (for the avoidance of doubt, on a balance of probabilities) that A was not aware of the facts or circumstances by virtue of which A became the holder of an approved supervised role or vetted supervised role or the holder



of an additional controller holding (as the case may be); but in such a case A is guilty of the offence if A fails to give the Commission notice in writing of the fact that A has become the holder of an approved supervised role or vetted supervised role or the holder of an additional controller holding (as the case may be) within a period of 14 days immediately following the day on which A became or ought reasonably to have become so aware.

(2) In this section an “**additional controller holding**” has the meaning given in the Banking Supervision Law, the Insurance Business Law or the Insurance Managers and Intermediaries Law (as the case may require).

**Restrictions on sale of shares.**

27. (1) The powers conferred by this section are exercisable where a person (the “**shareholder**”) -

- (a) has become a shareholder controller in contravention of the provisions of the supervisory Laws, or
- (b) has become or continued to be a shareholder controller after a notice of objection has been served on the shareholder under the provisions of the supervisory Laws or section 25.

(2) The Commission may, by an enforcement requirement imposed on the shareholder, direct that any specified shares to which this section applies (the “**restricted shares**”) shall, until further notice, be subject to all or any of the following restrictions -

- (a) any transfer of, or agreement to transfer, the restricted shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them, is void,
- (b) no voting right is exercisable in respect of the restricted shares,
- (c) no further shares shall be issued in right of the restricted shares or in pursuance of any offer made to their holder,
- (d) except in a winding up, no payment shall be made of any sum due on the restricted shares from the licensee, whether in respect of capital, dividend or otherwise.

(3) The appropriate Court, on the application of the Commission, may order the transfer of any restricted shares and, if the shares are subject to restrictions under subsection (2), that those restrictions shall cease or shall be modified.

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under the provisions of the supervisory Laws or section 25 -

- (a) until the end of the period within which, under the provisions of the supervisory Laws or (as the case may be) section 106, an appeal can be brought against the notice of

objection, or

- (b) if such an appeal is brought within that period, until the appeal is determined.

(5) Where an order is made under subsection (3) the appropriate Court may, on the application of the Commission, make such further order relating to the transfer of the restricted shares, the exercise of voting rights in respect of them, the issue of further shares in right of them or the making of payments due on them as it thinks fit.

(6) Where restricted shares are sold pursuant to an order under subsection (3), the proceeds of sale, less the costs of sale, shall be paid to Her Majesty's Sheriff for the benefit of the persons beneficially interested in them, and any such persons may apply to the appropriate Court for an order for the whole or part of the proceeds to be paid to them.

(7) This section applies -

- (a) to all shares in the licensee of which the shareholder is a shareholder controller which are held by or by any associated party of the shareholder and which were not so held immediately before the shareholder became a shareholder controller of that licensee, and
- (b) in cases where the shareholder became a shareholder controller of a licensee as a result of the acquisition by or by

any associated party of the shareholder of shares in another company, to all shares in that other company which are held by or by any associated party of the shareholder and which were not so held before the shareholder became a shareholder controller of that licensee.

(8) A copy of the enforcement requirement imposed on the shareholder under subsection (2) shall be served on the licensee or company to whose shares the requirement relates and, if the requirement relates to shares held by an associated party of the shareholder, on that associated party.

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

- (a) the Court of Alderney, where the person against whom the order under subsection (3) is sought is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person against whom the order under subsection (3) is sought is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(10) In the case of a licensed banking institution, this section applies in relation to a significant shareholder as it applies in relation to a shareholder controller.

**Suspension of licence.**

28. (1) The Commission may, by notice in writing served on a licensee, suspend its licence -

- (a) at the request of the licensee, or
- (b) in any case in which it appears to the Commission that it has power to revoke the licence under the provisions of section 29.

(2) The suspension of a licence shall be -

- (a) for a period specified by the Commission,
- (b) for a period continuing -
  - (i) until the occurrence of an event or circumstance so specified, or
  - (ii) until any prohibitions, restrictions, requirements or conditions so specified are complied with,

(the "**suspension period**").

(3) During the suspension period, subject to such exceptions, adaptations and modifications as the Commission may specify in writing (whether conditionally or unconditionally) -

- (a) the licensee may not carry on, or hold itself out as carrying on, regulated business of the description to which the suspended licence relates in or from within the Bailiwick or, if the licensee is a Bailiwick body, in or from within any jurisdiction whatsoever, and
- (b) no payments may be made by the licensee or any person acting on the licensee's behalf in respect of regulated business of that description without the prior written approval of the Commission.

(4) In considering whether or not to suspend a licence the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of the applicable supervisory Law or section 29 of this Law when considering whether or not to grant an application for, or (as the case may be) to revoke, a licence.

(5) The provisions of section 29(3) to (7) apply in relation to a decision of the Commission to suspend a licence as they apply in relation to a decision of the Commission to revoke a licence; and references in those subsections (however expressed) to revocation include references to suspension.

(6) For the avoidance of doubt, and without prejudice to subsection (3), a licensee remains a licensee for the purposes of this Law and the applicable supervisory Law during the suspension period.

**Revocation of licence.**

29. (1) The Commission may revoke a licence if it appears to the Commission that -

- (a) any of the applicable minimum criteria for licensing are not or have not been fulfilled -
  - (i) in relation to the licensee, or
  - (ii) except in the case of a licensee who holds only a personal fiduciary licence, in relation to any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the licensee,
- (b) the licensee or any other person described in paragraph (a)(ii) -
  - (i) has contravened or committed an offence under any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or
  - (ii) has contravened any prohibition, restriction,

condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

- (c) a person has become a holder of an approved supervised role or vetted supervised role in respect of the licensee in contravention of the provisions of the supervisory Laws,
- (d) a person has become or continued to be a holder of an approved supervised role or vetted supervised role in respect of the licensee after being given notice of objection under the provisions of the supervisory Laws or section 25,
- (e) the Commission has been provided with false, deceptive, misleading, inaccurate or incomplete information under the provisions of or for the purposes of this Law or any of the supervisory Laws -
  - (i) by or on behalf of the licensee, or
  - (ii) by or on behalf of an officer or employee of the licensee or a person who holds or is to hold a supervised role in respect of the licensee,
- (f) it is necessary or desirable to do so -



- (i) in the interests of the public, or
- (ii) in the interests the reputation of the Bailiwick as a finance centre,

whether by reason of the manner in which the licensee is conducting or proposing to conduct its affairs or for any other reason,

- (g) any fee, penalty or interest prescribed by regulations under section 129 or by or under the provisions of the Financial Services Commission Law or supervisory Laws -

- (i) payable by or in respect of the licensee, or
- (ii) payable in respect of the licence or business of the licensee,

has not been paid within the required period or when otherwise due,

- (h) a relevant supervisory authority has withdrawn from the licensee an authorisation corresponding to a licence under the provisions of the supervisory Laws,

- (i) the licensee has not carried on regulated business of the class or description to which the licence relates for a period of 12 consecutive months,
  - (j) a winding up event has occurred in respect of the licensee,
  - (k) in the case of a licensed insurer, the insurer's general representative has failed to satisfy an obligation to which the general representative is subject by virtue of the provisions of the Insurance Business Law,
  - (l) in the case of a licensed insurance intermediary, the intermediary's authorised insurance representative has failed to satisfy an obligation to which the authorised insurance representative is subject by virtue of the provisions of the Insurance Managers and Intermediaries Law,
  - (m) any other ground for the revocation of the licence -
    - (i) specified by the provisions of the relevant supervisory Law, or
    - (ii) which the States may by Ordinance specify,
- has arisen or is fulfilled.

(2) In considering whether or not to revoke a licence the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of the applicable supervisory Law when considering whether or not to grant an application for such a licence.

(3) A decision of the Commission to revoke a licence does not, subject to the provisions of subsection (4), have effect until the end of the period within which, under section 106, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is determined.

(4) Where the Commission is of the view that it is necessary or desirable to do so -

(a) in the interests of the public, or

(b) in the interests of the reputation of the Bailiwick as a finance centre,

the Commission may apply to the appropriate Court for an order under this subsection directing that its decision to revoke a licence should, without prejudice to any appeal in respect of the decision under section 106, have immediate effect; and the appropriate Court may make an order under this subsection subject to such terms and conditions as it thinks just.

(5) An application by the Commission for an order under subsection

(4) may, with the approval of the appropriate Court, and subject to such terms and conditions as the appropriate Court may direct, be made ex parte.

(6) Where the Commission makes a decision to revoke a licence, it 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 decision, notwithstanding that the decision may not have effect when the notice is published.

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.

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

(a) the Court of Alderney, where the licensee in relation to the licence of which the order is sought -

(i) is an Alderney company, or

(ii) is not an Alderney company or a Guernsey company but has its principal place of business in Alderney,

(b) the Court of the Seneschal, where the licensee in relation to the licence of which the order is sought is not an Alderney

company or a Guernsey company but has its principal place of business in Sark,

- (c) the Royal Court, in any other case.

**Revocation or suspension of authorisation or registration.**

30. (1) The Commission may, by notice in writing served on the designated administrator or the designated trustee or custodian of an authorised or registered collective investment scheme -

- (a) revoke the authorisation or registration of the scheme issued under section 8 of the Protection of Investors Law, or
- (b) suspend the authorisation or registration for a specified period, until the occurrence of a specified event or until specified prohibitions, restrictions, requirements or conditions are complied with,

if it appears to the Commission that -

- (i) the designated administrator or the designated trustee or custodian of the scheme has so requested,
- (ii) any of the requirements set out in Schedule 3 to the Protection of Investors Law are not or have not been

fulfilled in relation to the scheme,

(iii) the designated administrator or the designated trustee or custodian of the scheme -

(A) has contravened or committed an offence under any of the provisions of this Law, the Financial Services Commission Law or the Protection of Investors Law, or

(B) has contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

(iv) it is necessary or desirable to revoke or suspend the authorisation or registration in the interests of the public or the reputation of the Bailiwick as a finance centre,

(v) a winding up event has occurred in respect of the scheme, the designated administrator or the designated trustee or custodian,

(vi) any other ground for the revocation or suspension

of the authorisation or registration which the States  
may by Ordinance specify has arisen or is fulfilled.

(2) During a period of suspension of the authorisation or registration of a collective investment scheme in pursuance of subsection (1)(b), subject to such exceptions, adaptations and modifications as the Commission may specify in writing (whether conditionally or unconditionally), no payments may be made by the scheme or any person acting on the scheme's behalf without the prior written approval of the Commission.

(3) In considering whether or not to revoke or suspend an authorisation or registration of a collective investment scheme 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 8 of the Protection of Investors Law when considering whether or not to grant an application for authorisation or registration.

(4) A decision of the Commission to revoke or suspend an authorisation or registration of a collective investment scheme does not, subject to the provisions of subsection (5), have effect until the end of the period within which, under section 106, an appeal can be brought against the revocation or suspension or, if an appeal is brought within that period, until the appeal is determined.

(5) Where the Commission is of the view that it is necessary or desirable to do so -

(a) in the interests of the public or the investors or potential

investors in an authorised or registered collective investment scheme, or

- (b) in the interests of the reputation of the Bailiwick as a finance centre,

the Commission may apply to the appropriate Court for an order under this subsection directing that its decision to revoke or suspend an authorisation or registration should, without prejudice to any appeal in respect of the decision under section 106, have immediate effect; and the appropriate Court may make an order under this subsection on such terms and conditions as it thinks just.

(6) An application by the Commission for an order under subsection (5) may, with the approval of the appropriate Court, and on such terms and conditions as the appropriate Court may direct, be made ex parte.

(7) Where the Commission makes a decision to revoke or suspend the authorisation or registration of a collective investment scheme, it 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 decision, notwithstanding that the decision may not have effect when the notice is published.

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.



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

(a) the Court of Alderney, where the designated administrator of the collective investment scheme in relation to the authorisation or registration of which the order is sought -

(i) is an Alderney company, or

(ii) is not an Alderney company or a Guernsey company but has its principal place of business in Alderney,

(b) the Court of the Seneschal, where the designated administrator of the collective investment scheme in relation to the authorisation or registration of which the order is sought is not an Alderney company or a Guernsey company but has its principal place of business in Sark,

(c) the Royal Court, in any other case.

(9) For the avoidance of doubt, and without prejudice to subsection (2), an authorised or registered collective investment scheme remains an authorised or registered collective investment scheme for the purposes of this Law and the Protection of Investors Law during a period of suspension of the authorisation or registration in pursuance of subsection (1)(b).

**Power to impose licence.**

31. (1) Where the Commission has reasonable grounds to suspect that a company or other person which does not hold a licence to carry on regulated business of any particular description is carrying on or has carried on, or is holding itself out or has held itself out as carrying on, regulated business of that description in contravention of any of the provisions of the supervisory Laws, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the contravention (whether arising under the provisions of this Law or the supervisory Laws or otherwise), impose a licence on that company or other person in respect of that description of regulated business.

(2) Where a licence is imposed on a company or other person under this section -

- (a) it shall be deemed to have been granted a licence under the provisions of the relevant supervisory Law,
- (b) it shall be deemed to be a licensee in respect of the class or description of regulated business to which the licence relates for the purposes of this Law and the relevant supervisory Law, and
- (c) the licence shall be deemed to be a licence granted under the provisions of the relevant supervisory Law,

and the provisions of this Law and the relevant supervisory Law shall apply accordingly.

(3) The imposition of a licence under this section does not constitute evidence or any form of acknowledgement that all or any of the applicable grounds, criteria or matters to be taken into account in respect of the grant of a licence of that description under the provisions of the relevant supervisory Law are satisfied or, as the case may be, have been considered.

(4) Upon the imposition of a licence under this section the appropriate fee prescribed by or under the provisions of the relevant supervisory Law in respect of an application for and the grant of a licence of that description, or such other fee as may be prescribed by regulations under section 129, is payable.

(5) A licence imposed on a company or other person under this section shall (unless the licence provides otherwise) be effective from the earlier of -

- (a) service upon that company or other person of written confirmation that the licence has been issued, or
- (b) 11 a.m. on the day that an announcement that a licence has been so imposed is published -
  - (i) in La Gazette Officielle, or
  - (ii) in such other manner as the Commission may determine (including, without limitation, by being placed on the Commission's official website).

**Disapplication of non-discretionary exemption.**

32. (1) This section applies to a person acting, by virtue of paragraph (g) of section 3(1) of the Regulation of Fiduciaries Law, as a director of not more than six companies, being directorships which are not the subject of an exemption contained in any other paragraph of that section.

(2) A person to whom this section applies is considered for the purposes of this section to be the subject of an "**exemption**".

(3) The Commission may, by notice in writing served on a person to whom this section applies -

- (a) disapply the exemption permanently or without any express limitation of time, or
- (b) disapply the exemption for a specified period, until the occurrence of a specified event or until specified prohibitions, restrictions, requirements or conditions are complied with,

if it appears to the Commission that -

- (i) the person has so requested,
- (ii) any of the minimum criteria for licensing which

would be applicable if the person were a licensee are not or have not been fulfilled in relation to -

- (A) the person, or
  - (B) except in the case of a person who is a licensee who holds only a personal fiduciary licence, any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the person,
- (iii) the person or any person described in subparagraph (ii)(B) -
- (A) has contravened or committed an offence under any provision of this Law, the Financial Services Commission Law or the supervisory Laws, or
  - (B) has contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,
- (iv) it is necessary or desirable to disapply the

exemption in the interests of the public or the reputation of the Bailiwick as a finance centre,

- (v) any other ground which the States may by Ordinance specify as a ground for the disapplication of an exemption or any class or description thereof has arisen or is fulfilled.

(4) During the period of disapplication, subject to such exceptions, adaptations and modifications as the Commission may specify in writing (whether conditionally or unconditionally) -

- (a) persons to whom this section applies may not carry on, or hold themselves out as carrying on, regulated business of the description to which the exemption relates in or from within the Bailiwick, and
- (b) no payments may be made by those persons or any other persons acting on their behalf in respect of regulated business of that description without the prior written approval of the Commission.

(5) In considering whether or not to disapply an exemption the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of the applicable supervisory Law or section 29 of this Law when considering whether or not to grant an application for, or (as

the case may be) to revoke, a licence.

(6) A decision of the Commission to disapply an exemption does not, subject to the provisions of subsection (7), have effect until the end of the period within which, under section 106, an appeal can be brought against the disapplication or, if an appeal is brought within that period, until the appeal is determined.

(7) Where the Commission is of the view that it is necessary or desirable to do so -

(a) in the interests of the public, or

(b) in the interests of the reputation of the Bailiwick as a finance centre,

the Commission may apply to the appropriate Court for an order under this subsection directing that its decision to disapply an exemption should, without prejudice to any appeal in respect of the decision under section 106, have immediate effect; and the appropriate Court may make an order under this subsection on such terms and conditions as it thinks just.

(8) An application by the Commission for an order under subsection (7) may, with the approval of the appropriate Court, and on such terms and conditions as the appropriate Court may direct, be made *ex parte*.

(9) Where the Commission makes a decision to disapply an

exemption, it 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 decision, notwithstanding that the decision may not have effect when the notice is published.

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.

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

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

(11) The Policy and Resources Committee may by regulations provide that this section applies, subject to such exceptions, adaptations and modifications as may be specified in the regulations, in respect of any persons or class or description of persons referred to in subsection (12), not being persons described in subsection (1).



(12) The persons are those carrying on any class or description of regulated business -

- (a) who are exempted by the provisions of the supervisory Laws from the requirement to be licensed thereunder in respect of that class or description of business, or
- (b) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing thereunder in respect of that class or description of business,

but not where they are carrying on that class or description of regulated business by virtue of the exercise by the Commission in respect of them of any discretion or power conferred by or under the provisions of the supervisory Laws.

#### *Prohibition orders*

#### **Power to make prohibition orders.**

33. (1) Where in the opinion of the Commission, having regard to the applicable minimum criteria for licensing, an individual is not or is no longer a fit and proper person to perform functions as or on behalf of -

- (a) a licensee in relation to a regulated business,
  - (b) an authorised or registered collective investment scheme,
- or

- (c) the holder of a supervised role in respect of, or an officer or employee of, a licensee or authorised or registered collective investment scheme,

the Commission may make and subsequently renew on one or more occasions an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified class or description of function.

For the avoidance of doubt, a prohibition order may be made in respect of an individual whether or not he or she has performed, or has been required, authorised or appointed to perform, the function which the order prohibits.

(2) A prohibition order may relate to -

- (a) any regulated business, any specified regulated business or any specified class or description of regulated business,
- (b) any licensee, any specified licensee or any specified class or description of licensee,
- (c) any authorised or registered collective investment scheme, any specified authorised or registered collective investment scheme, or any specified class or description of authorised or registered collective investment scheme,

- (d) any supervised role, office or employment, any specified supervised role, office or employment or any specified class or description of supervised role, office or employment.

(3) An individual who performs or agrees to perform any function in breach of a prohibition order or a renewal thereof is guilty of an offence.

(4) A licensee, and the designated administrator and designated trustee or custodian of an authorised or registered collective investment scheme, shall take all reasonable care to ensure that none of its functions, in relation to the carrying on of a regulated business, or of an authorised or registered collective investment scheme, as the case may be, and none of the functions of the holder of a supervised role in respect of it or of its officers or employees, is performed by a person who is prohibited from performing that function by a prohibition order.

(5) The Commission may, on the application of the individual named in a prohibition order or of its own motion, vary or revoke the order.

(6) A prohibition order and any renewal thereof -

- (a) shall have effect for such period (which may be indefinite),  
and
- (b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

**List of prohibition orders.**

34. (1) The Commission shall establish and maintain, in such form as the Commission may determine, a list of all individuals to whom a prohibition order applies ("**the list**").

(2) The list shall specify the functions or class or description of functions which the individual concerned is prohibited from performing.

(3) 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.

(4) 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 -

(a) the list, and

(b) the fact that a person has been named in a prohibition order or that a prohibition order has been renewed, varied or revoked.

(5) 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.

**Personal liability in case of breach of prohibition order.**

35. (1) An individual who performs or agrees to perform any function in breach of a prohibition order or a renewal thereof is personally liable, without limitation of liability, for any debts and liabilities of the licensee relating to the regulated business, or of the scheme, in respect of which the contravention was committed which were incurred at any time when he or she was acting in contravention of the prohibition order or the renewal thereof; and a person's liability under this section is joint and several with that of the licensee and of any other person -

- (a) so liable in relation to that regulated business or scheme (as the case may be), or
- (b) otherwise liable in respect of the contravention, debts or liabilities.

(2) The Commission shall, by notice in writing served not less than 7 days before the date of the hearing (or such other period as the court may, in its absolute discretion, direct), be notified of the date, time and place of any proceedings before the court seeking to enforce or otherwise in respect of the personal liability of an individual arising by virtue of this section.

(3) At the hearing of the proceedings the Commission may (without prejudice to any other power of the Commission to apply to the court for any other order, relief or remedy) make representations to the court which the court shall take into

account.

*Other enforcement powers of Commission*

**Power to issue private reprimand.**

36. (1) Where the Commission considers that it is appropriate to do so, having regard to compliance with any of the provisions of this Law, the supervisory Laws and the appointed Laws by -

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

the Commission may issue to the licensee or person a private reprimand.

(2) The Commission may not publish a private reprimand except with the consent of the licensee or person in respect of whom the reprimand was issued.

**Enforceable undertakings.**

37. (1) The Commission may accept a written undertaking given by a person ("**the promissor**") -

- (a) that the promissor will, in order to -
  - (i) comply with -

- (A) the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or
- (B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or
- (ii) fulfil any of the applicable minimum criteria for licensing (whether in respect of the promissor or any other person),

take specified action,

(b) that the promissor will, in order to -

(i) comply with -

- (A) the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or

(B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or

(ii) fulfil any of the applicable minimum criteria for licensing (whether in respect of the promissor or any other person),

refrain from taking specified action,

(c) that the promissor will take specified action directed towards ensuring that the promissor does not -

(i) contravene -

(A) the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or

(B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or



(ii) fail to fulfil any of the applicable minimum criteria for licensing (whether in respect of the promissor or any other person),

or that the promissor would be unlikely to contravene or fail to fulfil those provisions or criteria in the future.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The undertaking may contain or append such information, documents, statements and other material, and such ancillary, incidental and supplementary provision, as the Commission and the promissor may determine, including (without limitation) an agreed statement of the facts and an agreement or acknowledgement as to the consequences of any contravention.

(4) The promissor may withdraw or vary the undertaking at any time, but only with the consent of the Commission.

(5) The Commission may, by written notice given to the promissor, cancel the undertaking.

(6) An undertaking under this section may be entered into by any person whomsoever, whether or not a licensee or former licensee or the holder or former

holder of a supervised role in respect of, or an officer or employee of, a licensee or former licensee.

(7) On acceptance of the undertaking the Commission may, on such terms and conditions as it thinks fit, stay, suspend, determine or settle any other process, proceedings or action instituted or being considered by it under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, whether in relation to the promisor, any regulated business in respect of which the undertaking was given or any other person, entity or business.

(8) An undertaking and any contravention thereof may be taken into account by the Commission in considering whether or not to perform any other function conferred by the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, whether in relation to the promisor, any regulated business in respect of which the undertaking was given or any other person, entity or business.

(9) Where -

- (a) a promisor has given an undertaking under this section,
- (b) the undertaking has not been withdrawn or cancelled, and
- (c) the Commission considers that the promisor has contravened the undertaking,

the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the contravention (whether arising under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws or otherwise, and whether in relation to the promissor, any regulated business in respect of which the undertaking was given or any other person, entity or business), apply to the appropriate Court for an order under subsection (10).

(10) If the appropriate Court is satisfied that the promissor has contravened the undertaking, the Court may, on such terms and conditions and subject to such penalty as it thinks fit, make all or any of the following orders -

- (a) an order directing the promissor to comply with the undertaking,
- (b) an order directing the promissor to pay an amount not exceeding the amount of any financial benefit which the promissor has obtained directly or indirectly and which is reasonably attributable to the contravention,
- (c) an order directing the promissor to compensate any other person who has suffered loss or damage as a result of the contravention,
- (d) any other order that the Court considers appropriate.

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

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

**Public statements.**

38. (1) Where in the opinion of the Commission a licensee, former licensee, relevant officer or other person -

- (a) has contravened in a material particular -
  - (i) a provision of this Law, the Financial Services Commission Law or the prescribed Laws, or
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or
- (b) does not fulfil any of the applicable minimum criteria for licensing,

it 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, a statement to that effect.

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

(2) In deciding whether or not to publish a statement under this section and, if so, the terms thereof the Commission must take into consideration the following factors -

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and

creditors of that person, of publishing a statement,

- (f) the action taken by the Commission under this section in other cases, and
- (g) any other matter the Commission considers relevant.

(3) In this section and section 39 a "**relevant officer**" means a person who when the contravention or non-fulfilment in question took place was the holder of a supervised role in respect of, or an officer of, the licensee or former licensee.

**Discretionary financial penalties.**

39. (1) Where in the opinion of the Commission a licensee, former licensee, relevant officer or other person -

- (a) has contravened in a material particular -
  - (i) a provision of this Law, the Financial Services Commission Law or the prescribed Laws, or
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or
- (b) does not fulfil any of the applicable minimum criteria for

licensing,

it may impose on that person a penalty in respect of the contravention or non-fulfilment of such amount not exceeding the relevant sum calculated in accordance with subsections (2) and (3) (or such other amount as the States may specify by Ordinance) as it considers appropriate.

(2) The relevant sum is -

- (a) in the case of a licensee or former licensee, but not a personal fiduciary licensee or former personal fiduciary licensee, £4,000,000, provided that any penalty of more than £300,000 shall not exceed 10% of the turnover of the licensee or former licensee in question, or
- (b) in the case of a personal fiduciary licensee or former personal fiduciary licensee, a relevant officer or any other person, £400,000,

and in this section the expression "**personal fiduciary licensee**" means a licensee who holds only a personal fiduciary licence.

(3) The Policy and Resources Committee may, after consultation with the Commission, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, by regulation make such provision as it thinks fit for the purpose of carrying this section into effect including,

without limitation, provision in respect of -

- (a) the meaning of the expressions "turnover" and "emoluments" for the purposes of this section, including without limitation the determination and basis of calculation thereof, and
- (b) the banding of penalties under this section within the relevant sum calculated in accordance with subsections (2) and (3) and the criteria subject to which each band is to be applied, taking into consideration the factors set out in paragraphs (a) to (g) of subsection (6).

(4) The Commission shall issue and publish, in such manner as it considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general, guidance as to its general approach to enforcement.

(5) The States may by Ordinance amend this section.

(6) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Commission must take into consideration the following factors -

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,



- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty,
- (f) the penalties imposed by the Commission under this section in other cases,
- (g) in the case of a personal fiduciary licensee or former personal fiduciary licensee or a relevant officer, the emoluments arising from or otherwise in respect of the relevant position held, at the time when the contravention or non-fulfilment took place and otherwise, and
- (h) any other matter the Commission considers relevant.

(7) Where a penalty is imposed on a person under this section, 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, that person's name and the amount of the penalty.

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.

(8) Any sums which the Commission receives in any calendar year in respect of penalties imposed under this section on persons who are licensees, former licensees or relevant officers for the purposes of a particular supervisory Law shall be taken into account by the Commission in determining the fees payable to it under the provisions of section 129 or of that Law in the following calendar year or, if that is not reasonably practicable, in the subsequent calendar year.

(9) Penalties imposed under this section are recoverable by the Commission as a civil debt.

**Administrative financial penalties.**

40. (1) The Commission may by regulation make such provision as it thinks fit in respect of the charging of administrative financial penalties for -

- (a) the late payment of fees or charges required to be paid, or
- (b) the late filing or delivery of information or documents required to be filed or delivered,

by or under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws.

(2) Regulations under this section -

- (a) may prescribe the amount and / or basis of calculation of penalties payable in the circumstances described in subsection (1),
- (b) may provide for the payment and collection of fees, charges and penalties and for their recovery by the Commission as a civil debt,
- (c) may make provision in relation to appeals (including, without limitation, provision applying the provisions of section 106 subject to such exceptions, adaptations and modifications as may be prescribed by the regulations), and
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force.

**Public announcements of enforcement proceedings.**

41. (1) The Commission may, subject to the provisions of this Law and with the prior written authority of the Director-General, if it thinks it necessary or desirable to do so in the interests of -

- (a) the public, or
- (b) the reputation of the Bailiwick as a finance centre,

or for the purposes of the performance of its functions, publish a statement that a person or entity named in the publication is the subject of -

- (i) proceedings, other enforcement action or sanction (civil, criminal or administrative) under the provisions of this Law, the Financial Services Commission Law, the supervisory Laws or any other enactment specified for the purposes of this section by regulations of the Policy and Resources Committee, or
- (ii) an investigation of a suspected contravention or non-fulfilment of -
  - (A) any of the provisions mentioned in subparagraph (i),
  - (B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any of

those provisions, or

- (C) any of the applicable minimum criteria for licensing, whether in relation to the person or entity so named or any person who is the holder of a supervised role in respect of, or an officer or employee of, the person or entity so named.

(2) For the purposes of subsection (1), and without limitation, persons or entities shall be considered to be the subject of proceedings or an investigation mentioned in that subsection if any relevant power within the meaning of section 11(9) is being exercised in respect of them.

(3) Where -

- (a) under subsection (1) a statement of any proceedings, enforcement action, sanction or investigation mentioned in that subsection has been published and the proceedings, enforcement action, sanction or investigation are discontinued or, in the case of an investigation, the Commission decides that no further action is to be taken, or
- (b) an appeal against a decision to publish a statement under that subsection is upheld,

the Commission shall, if the person or entity who was the subject of the statement or, as the case may be, the appellant so requests, publish a statement of that fact.

(4) A statement under subsection (1) or (3) shall be published in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine.

(5) A publication under subsection (1) or (3) may contain such information in respect of any person or entity named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

*Disqualification orders against auditors and actuaries*

**Disqualification orders of Commission against auditors.**

42. (1) Where in the opinion of the Commission a person who is or has been an auditor of a licensee (within the meaning of subsection (6)) -

- (a) has failed to comply with any duty imposed by or under -
  - (i) the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or

- (b) is for any other reason unfit to be an auditor of a licensee (whether by reason of lacking the necessary skills or resources to carry out effectively the responsibilities as auditor or otherwise),

or for any other reason it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Commission may make and subsequently renew, on one or more occasions, an order (an "**auditors disqualification order**") disqualifying that person from being the auditor of any licensee, or of any particular, or any particular class, description or category of, licensee.

(2) The Commission may, on the application of the person named in an auditors disqualification order or of its own motion, vary or revoke an auditors disqualification order.

(3) A person who performs or agrees to perform any function in breach of an auditors disqualification order is guilty of an offence.

(4) A licensee shall take all reasonable care to ensure that none of its functions in relation to the carrying on of regulated business or any other business of the licensee is performed by a person who is disqualified from performing that function by an auditors disqualification order.

(5) An auditors disqualification order and any renewal thereof -

- (a) shall have effect for such period (which may be indefinite),  
and
- (b) may contain such ancillary, incidental and supplementary  
terms and conditions,

as shall be specified in it.

(6) In this section and sections 36 to 45 a "**licensee**" means a licensee within the meaning of section 4 (and see section 31(2) in respect of persons on whom a licence is imposed under section 31) and includes -

- (a) 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 consent, registration, permission or authorisation from the Commission under the provisions of the supervisory Laws (including, for the avoidance of doubt, and without limitation, an authorised or registered collective investment scheme), and
- (b) a person, entity or business registered under the provisions of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>k</sup>, but a "**licensee**" does not include such a person, entity or business

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



in sections 36, 37 and 41.

**List of disqualification orders against auditors.**

43. (1) The Commission shall establish and maintain, in such form as the Commission may determine, a list of all persons to whom an auditors disqualification order under section 42 applies ("**the list**").

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

(3) The 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 -

(a) the list, and

(b) the fact that a person has been named in an auditors disqualification order or that an auditors disqualification order has been renewed, varied or revoked.

(4) 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.

**Disqualification orders of Commission against actuaries.**

44. (1) Where in the opinion of the Commission a person who is or has been an actuary of a licensee -

- (a) has failed to comply with any duty imposed by or under -
  - (i) the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or
- (b) is for any other reason unfit to be an actuary of a licensee (whether by reason of lacking the necessary skills or resources to carry out effectively the responsibilities as actuary or otherwise),

or for any other reason it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Commission may make and subsequently renew, on one or more occasions, an order (an "**actuaries disqualification order**") disqualifying that person from being the actuary of any licensee, or of any particular, or any particular class, description or category of, licensee.

(2) The Commission may, on the application of the person named in an actuaries disqualification order or of its own motion, vary or revoke an actuaries disqualification order.

(3) A person who performs or agrees to perform any function in breach of an actuaries disqualification order is guilty of an offence.

(4) A licensee shall take all reasonable care to ensure that none of its functions in relation to the carrying on of regulated business or any other business of the licensee is performed by a person who is disqualified from performing that function by an actuaries disqualification order.

(5) An actuaries disqualification order and any renewal thereof -

(a) shall have effect for such period (which may be indefinite),  
and

(b) may contain such ancillary, incidental and supplementary  
terms and conditions,

as shall be specified in it.

**List of disqualification orders against actuaries.**

45. (1) The Commission shall establish and maintain, in such form as the Commission may determine, a list of all persons to whom an actuaries disqualification order under section 44 applies ("**the list**").

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

(3) The 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 -

(a) the list, and

(b) the fact that a person has been named in an actuaries disqualification order or that an actuaries disqualification order has been renewed, varied or revoked.

(4) 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.

*Injunctions, restitution and other remedies*

**Repayment of monies from unlawful business and restitution orders.**

46. (1) If on the application of the Commission it appears to the appropriate Court that a person ("A") has carried on business in contravention of any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or any prohibition, restriction, condition, obligation, enforcement requirement,

other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, the appropriate Court may -

- (a) order A and any other person who appears to the appropriate Court to have been knowingly concerned in the contravention, immediately or at such time as the appropriate Court may direct, to repay monies accepted from, or paid over (whether to A or to any other person) by, customers or other persons in the course of A so carrying on that business, or
- (b) appoint a receiver (upon such terms and conditions and with such functions as the appropriate Court may direct) to recover those monies.

(2) If on the application of the Commission it appears to the appropriate Court that profits have accrued to a person ("**B**") as a result of any business having been carried on in contravention of any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, the appropriate Court may order B to pay to Her Majesty's Sheriff, or may appoint a receiver (upon such terms and conditions and with such functions as the appropriate Court may direct) to recover from B, such sum as appears to the appropriate Court to be just having regard to the profits appearing to the appropriate Court to have accrued to B.

(3) If on the application of the Commission it appears to the appropriate Court that a person (“C”) has carried on business in contravention of any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, or any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and that any customer has suffered loss or been otherwise adversely affected as a result of that contravention, the appropriate Court may order C to pay to Her Majesty's Sheriff, or may appoint a receiver (upon such terms and conditions and with such functions as the appropriate Court may direct) to recover from C, such sum as appears to the appropriate Court to be just having regard to the extent of any such loss or adverse effect.

(4) With leave of the appropriate court, an application may also be made to the appropriate Court under subsection (1), (2) or (3) by any person other than the Commission except where the person from whom payment or recovery is sought is (or was, at the time of the contravention in question) -

- (a) a licensee,
- (b) an authorised or registered collective investment scheme,
- (c) a person carrying on the business in question -
  - (i) who is exempted by the provisions of the supervisory Laws from the requirement to be licensed thereunder, or

- (ii) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing thereunder,

in respect of that class or description of business.

(5) In deciding whether and on what terms and conditions to make an order under this section the appropriate Court shall have regard to the effect that payment or repayment pursuant to the order would have on the solvency of the person concerned and on the ability of the person concerned to carry on business in a manner satisfactory to creditors.

(6) Any amount paid to Her Majesty's Sheriff or recovered by a receiver pursuant to this section shall be distributed among such persons as the appropriate Court may direct, being -

- (a) persons appearing to the appropriate Court to have been the customers in respect of whom the business as a result of which the monies or profits accrued was carried on or, as the case may be, who suffered the loss or other adverse effect, or

- (b) such other persons as the appropriate Court thinks just.

(7) On an application under this section the appropriate Court may

require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what monies or profits have accrued to the person concerned as mentioned in subsection (1) or (2) or, as the case may be, whether and if so what loss or other adverse effect was suffered as mentioned in subsection (3) and for determining how any amounts are to be distributed under this section; and the appropriate Court may require any such accounts or information to be verified in such manner as it may direct.

(8) An order of the appropriate Court under any of the provisions of this section may be made on such terms and conditions, and subject to such penalty, and may contain such incidental, ancillary, consequential or supplementary provision, as the appropriate Court thinks fit.

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

- (a) the Court of Alderney, where the person against whom the order under this section is sought is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person against whom the order under this section is sought is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(10) For the avoidance of doubt this section does not affect any other



right of any person to bring proceedings or any other remedy.

**Injunctions to restrain unlawful business, etc.**

47. (1) If on the application of the Commission or, with leave of the court, any other person, the appropriate Court is satisfied that -

- (a) there is a reasonable likelihood that a person will contravene any of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws or any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or
- (b) a person has or may have contravened a provision, prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement mentioned in paragraph (a) and there is a reasonable likelihood that the contravention will continue or be repeated,

the appropriate Court may -

- (i) grant an injunction restraining the contravention, and

- (ii) where the appropriate Court is satisfied that the contravention has occurred and that steps could be taken to remedy it, order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(2) If on the application of the Commission or, with leave of the court, any other person, the appropriate Court is satisfied that a person (“A”) has or may have contravened a provision, prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement mentioned in subsection (1)(a), the appropriate Court may grant an injunction restraining -

- (a) A or any of A’s associates, officers or employees,
- (b) the holder of a supervised role in respect of A,
- (c) any of A’s officers, or the designated administrator or designated trustee or custodian, where A is a collective investment scheme, or
- (d) any other person controlling A’s business, property or affairs or otherwise specified in the injunction,

from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and subject to such penalty, and may contain such incidental, ancillary, consequential or supplementary provision, as the appropriate Court thinks fit including, without limitation, provision for the appointment of a receiver or other person to exercise such powers as the appropriate Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

(4) An application for an injunction under this section may, with the approval of the appropriate Court, and on such terms and conditions as the appropriate Court may direct, be made ex parte.

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

- (a) the Court of Alderney, where the person against whom the injunction under this section is sought is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person against whom the injunction under this section is sought is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(6) The powers conferred upon the Royal Court by the provisions of this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>1</sup>; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) apply in relation to injunctions of the Royal Court under this section.

**General provisions as to receivers.**

48. (1) Where the appropriate Court has appointed a receiver under section 46 or 47, the appropriate Court may, on the application of the receiver or of any other person appearing to the appropriate Court to have a sufficient interest in the matter, direct any person holding or having possession or control of any monies, profits or assets in respect of which the receiver was appointed to give possession of them to the receiver or otherwise to deal with them, or not to deal with them, in any manner specified by the appropriate Court.

(2) Where a receiver appointed under section 46 or 47 (“R”) takes any action -

- (a) in relation to property which is not property in respect of which R was appointed, being action which R would be entitled to take if it were such property, or
- (b) in relation to property which is property in respect of which R was appointed, being action which R is not entitled to

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<sup>1</sup> Ordres en Conseil Vol. XXX, p. 145.

take,

believing and having reasonable grounds for believing in either case that R is entitled to take that action in relation to that property, R is not liable to any person in respect of any loss or damage resulting from R's action except in so far as the loss or damage is caused by R's own fraud, wilful misconduct or gross negligence.

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

- (a) the Court of Alderney, where the person against whom the direction under subsection (1) is sought is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person against whom the direction under subsection (1) is sought is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

#### PART IV

#### REGULATED BUSINESS DESCRIPTIONS AND NAMES

##### **Restrictions on use of certain descriptions and names.**

49. (1) No persons other than -

- (a) persons who are licensees in respect of any class or

description of regulated business,

- (b) in relation to the indication set out in subparagraph (i), and in respect only of deposit-taking business, persons specified in paragraph 2, 3, 4 or 5 of Schedule 1 to the Banking Supervision Law, or
- (c) in relation to the indication set out in subparagraph (i), persons who have first obtained the permission of the Commission in that behalf under section 50 and who are acting in accordance with the conditions of that permission,

shall so describe themselves or so hold themselves out, or use any such name, as to indicate or reasonably be understood to indicate, whether in English or any other language -

- (i) that they are carrying on regulated business of that class or description in or from within the Bailiwick or (in the case of Bailiwick bodies) that they are carrying on regulated business of that class or description in or from within any jurisdiction whatsoever, or
- (ii) that they are licensees in respect of that class or description of regulated business.

(2) No persons shall falsely state, or do anything which falsely indicates, that -

(a) they are entitled although not licensees in respect of any class or description of regulated business to carry on, in or from within any place, regulated business of that class or description, or

(b) a collective investment scheme which is not for the time being authorised or registered is an authorised or (as the case may be) a registered collective investment scheme.

(3) The Commission may by regulation specify any names, descriptions, words or phrases the use of which by any person without the Commission's consent shall be deemed for the purposes of subsection (1) to indicate, in respect of that person, the matters referred to in subparagraphs (i) and (ii) of that subsection and which accordingly fall within the provisions thereof.

(4) A person who contravenes any provision of this section is guilty of an offence.

(5) The provisions of this section are in addition to and not in derogation from the provisions of section 2(1) of the Insurance Managers and Intermediaries Law.

**Permission to use certain descriptions or names.**

50. (1) A person wishing to obtain permission for the purposes of section 49, 54 or 55 or section 2(1) of the Insurance Managers and Intermediaries Law shall apply in that behalf to the Commission.

(2) An application under subsection (1) shall be made 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 129 or by or under the provisions of the Financial Services Commission Law or the supervisory Laws;

and the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as the Commission may reasonably require for the purpose of determining the application.

(3) The Commission may, upon receipt of an application under subsection (1) -

- (a) grant the application unconditionally,
- (b) grant the application subject to such conditions as it thinks fit, or



(c) refuse the application.

(4) The Commission may vary or revoke a permission granted under this section or impose, vary or rescind any condition in respect of any such permission.

**Commission may object to certain names.**

51. (1) An applicant for a licence under the provisions of the supervisory Laws shall give notice in writing to the Commission of its name and of any name it is using or proposing to use for the purposes of or in connection with any business carried on by it; and the Commission may, by notice in writing served upon the applicant, object to that name.

(2) Where a licensee proposes to -

(a) change its name or any name it uses for the purposes of or in connection with any business carried on by it, or

(b) use a name for the purposes of or in connection with any business carried on by it,

it shall give notice in writing to the Commission of the proposed name; and the Commission may, within a period of 56 days immediately following the day of receipt by it of such notice, by notice in writing served upon the licensee object to the proposed name.

(3) The Commission may also give notice in writing objecting to a

name in cases where the person in question failed to give notice to the Commission in accordance with subsection (1) or (2).

(4) The Commission shall not give notice objecting to a name under subsection (1), (2) or (3) unless it considers that the name is -

- (a) misleading to the public (whether because it might induce the public to confuse the person in question with some other person established in the Bailiwick or elsewhere, or for any other reason), or
- (b) otherwise undesirable.

(5) For the purposes of this section -

- (a) the whole of the name in question shall be taken into account in deciding whether it is misleading or undesirable, but
- (b) no objection may be made to so much of the name as the person in question is entitled to use by virtue of the provisions of this Law or the supervisory Laws.

(6) Where as a result of a material change in circumstances since the time when notice was given to the Commission under subsection (1) or (2) or as a result of further information becoming available to the Commission since that time, it appears

to the Commission that a name to which it might have objected under that subsection gives so misleading an indication of the nature of the activities of the person in question as to be likely to cause harm to the public, the Commission may, by notice in writing served upon that person, object to that name.

For the avoidance of doubt, a notice may be given under this subsection after the expiration of the period of 56 days referred to in subsection (2).

**Provisions as to notices under section 51.**

52. (1) A notice to be given to the Commission under section 51 shall be given in such form and manner and shall be accompanied by such information and documents as the Commission may require; and the Commission may at any time after receipt of the notice require the person giving notice to furnish such additional information and documents as the Commission may reasonably require for the purpose of deciding whether or not to give notice objecting to a name.

(2) A notice of objection -

(a) under section 51(1), (2) or (3), may take immediate effect,

(b) under section 51(6), takes effect -

(i) at the end of the period within which, under section 106, an appeal can be brought, or

(ii) if an appeal is brought within that period, when the

appeal is determined,

or on such later date as the Commission may specify in the notice.

**Offences in relation to objections to names.**

53. (1) Where the Commission gives notice objecting to a name under section 51, the person upon whom the notice was served shall not use or cause or permit to be used the name for the purposes of or in connection with any business carried on in or from within the Bailiwick after the notice takes effect.

(2) A person who contravenes any provision of this section is guilty of an offence.

**Incorporation and change of name of companies.**

54. (1) Without prejudice to the provisions of any other enactment -

(a) no application -

(i) to the Registrar of Companies under the Companies (Guernsey) Law, 2008<sup>m</sup> for the incorporation of a company,

(ii) to the Alderney Registrar under the Companies

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

(Alderney) Law, 1994<sup>n</sup> for the registration of the memorandum of a company,

- (iii) to Her Majesty's Greffier under the Limited Partnerships (Guernsey) Law, 1995 for the registration of a limited partnership,
- (iv) to the Registrar of Foundations under the Foundations (Guernsey) Law, 2012 for the establishment of a foundation, or
- (v) to the Registrar of Limited Liability Partnerships under the Limited Liability Partnerships (Guernsey) Law, 2013 for the incorporation of a limited liability partnership,

in the proposed name of which there appears any word listed in subsection (2) or specified by regulation under section 49(3) or any cognate expression, whether in English or any other language, shall be granted unless the applicant establishes that the permission of the Commission in that behalf has been obtained under section 50 and that any conditions subject to which that permission was granted have, so far as practicable, been complied with,

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<sup>n</sup> Order in Council No. XXXIV of 1994.

- (b) no application -
- (i) to the Registrar of Companies under the Companies (Guernsey) Law, 2008 for authorisation of a change of company name,
  - (ii) to the Court of Alderney under the Companies (Alderney) Law, 1994 for an order confirming a change of company name,
  - (iii) to Her Majesty's Greffier under the Limited Partnerships (Guernsey) Law, 1995 for the issue of a new certificate of registration relating to a change of limited partnership name,
  - (iv) to the Registrar of Foundations under the Foundations (Guernsey) Law, 2012 for the issue of a new certificate of registration relating to a change of foundation name, or
  - (v) to the Registrar of Limited Liability Partnerships under the Limited Liability Partnerships (Guernsey) Law, 2013 for a grant of change of limited liability partnership name,

by the inclusion of any word listed in subsection (2) or specified by regulation under section 49(3) or any cognate expression, whether in English or any other language, shall be granted unless the applicant establishes that -

- (A) it is a licensee of the class or description specified in relation to that word in subsection (2),
  - (B) it is, in the case of the words listed in subsection (2)(a), a person specified in paragraph 2, 3, 4 or 5 of Schedule 1 to the Banking Supervision Law, or
  - (C) it has obtained the permission of the Commission in that behalf under section 50 and any conditions subject to which that permission was granted have, so far as practicable, been complied with,
- (c) notwithstanding the provisions of paragraph (b), and except where item (C) of that paragraph applies, no application described in that paragraph shall be granted unless the applicant produces a letter from the Commission stating that no notice of objection under section 51 is in force in respect of the proposed name.

(2) The words referred to in subsection (1) are -

- (a) bank, banker, banking, building society or credit union (in relation to, for the purposes of subsection (1)(b), licensed banking institutions),
- (b) trust, trustee, fiduciary, executor or nominee (in relation to, for the purposes of subsection (1)(b), licensed fiduciaries),
- (c) insurance, reinsurance or assurance (in relation to, for the purposes of subsection (1)(b), licensed insurers, licensed insurance managers or licensed insurance intermediaries),
- (d) adviser, broker or consultant in combination with the word insurance, reinsurance or assurance (in relation to, for the purposes of subsection (1)(b), licensed insurance intermediaries).

(3) The Commission may by regulation amend subsection (2) by adding any word to, or removing any word from, the words the use of which in the name or proposed name of a company, partnership, limited liability partnership or foundation is for the time being thereby regulated.

**Applications by Commission for change of company name.**

55. (1) Where a Guernsey company, an Alderney company, a Guernsey



limited partnership, a Guernsey foundation or a Guernsey limited liability partnership other than -

- (a) a licensee in respect of any class or description of regulated business,
- (b) in relation to the indication set out in subparagraph (ii), and in respect only of deposit-taking business, a person specified in paragraph 2, 3, 4 or 5 of Schedule 1 to the Banking Supervision Law, or
- (c) in relation to the indication set out in subparagraph (ii), a body which has first obtained the permission of the Commission in that behalf under section 50 and which is acting in accordance with the conditions of that permission,

has a company, partnership, limited liability partnership or (as the case may be) foundation name which indicates or may reasonably be understood to indicate, whether in English or any other language, that -

- (i) it is a licensee in respect of that class or description of regulated business, or
- (ii) it is carrying on regulated business of that class or description in or from within any jurisdiction whatsoever,

the Registrar of Companies, the Court of Alderney, Her Majesty's Greffier, the Registrar of Foundations or (as the case may be) the Registrar of Limited Liability Partnerships may, on the application of the Commission, direct the body to change its name within such period as they may respectively direct.

(2) Where a Guernsey company, an Alderney company, a Guernsey limited partnership, a Guernsey foundation or a Guernsey limited liability partnership other than -

- (a) a licensee in respect of any class or description of regulated business,
- (b) in relation to the indication set out in subparagraph (ii), and in respect only of deposit-taking business, a person specified in paragraph 2, 3, 4 or 5 of Schedule 1 to that Law, or
- (c) in relation to the indication set out in subparagraph (ii), a body which has first obtained the permission of the Commission in that behalf under section 50 and which is acting in accordance with the conditions of that permission,

makes an application to the Registrar of Companies, the Court of Alderney, Her Majesty's Greffier, the Registrar of Foundations or (as the case may be) the Registrar of Limited Liability Partnerships for a change of company, partnership, limited liability partnership

or foundation name to a name which indicates or may reasonably be understood to indicate, whether in English or any other language, that the body -

- (i) is a licensee in respect of that class or description of regulated business, or
- (ii) is carrying on regulated business of that class or description in or from within any jurisdiction whatsoever,

the application may be refused.

(3) The Commission may by regulation specify any names, descriptions, words or phrases the use of which by any person without the Commission's consent shall be deemed for the purposes of subsections (1) and (2) to indicate, in respect of that person, the matters referred to in subparagraphs (i) and (ii) of those subsections and which accordingly fall within the provisions thereof.

(4) A body which fails to comply with any provision of a direction under subsection (1) is -

- (a) guilty of an offence, and
- (b) liable to be dissolved or wound up (as the case may be) on the application of the Commission under section 406 of the Companies (Guernsey) Law, 2008, section 125 of the

Companies (Alderney) Law, 1994, section 29 of the Limited Partnerships (Guernsey) Law, 1995, paragraph 24 of Schedule 2 to the Foundations (Guernsey) Law, 2012 or (as the case may be) section 86 of the Limited Liability Partnerships (Guernsey) Law, 2013.

(5) The provisions of this section are without prejudice to the provisions of any other enactment.

## PART V MARKET ABUSE

### *Market abuse, the code, and penalties*

#### **Market abuse.**

56. (1) For the purposes of this Law, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) -

- (a) which occurs in relation to qualifying investments traded on a market to which this section applies,
- (b) which satisfies any one or more of the conditions set out in subsection (2), and
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the

part of the person or persons concerned to observe the standard of behaviour reasonably expected of persons in their position in relation to the market.

(2) The conditions are that -

- (a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by that regular user as relevant when deciding the terms on which transactions in investments of the kind in question should be effected,
- (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question,
- (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

(3) The Policy and Resources Committee may by regulations prescribe (whether by name or by description) -

- (a) the markets to which this section applies, and
- (b) the investments which are qualifying investments in relation to those markets.

(4) The regulations may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs -

- (a) in the Bailiwick, or
- (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the Bailiwick or which is accessible electronically in the Bailiwick.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which -

- (a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments, or
- (b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.

(7) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded for the purpose of this section as being generally available to them.

(8) Behaviour does not amount to market abuse -

(a) if it conforms with -

(i) price stabilising rules made by the Commission under section 110, or

(ii) codes or guidance issued by the Commission on the management of conflicts of interests, and

(b) the rules, codes or guidance include a provision to the effect that behaviour conforming with the rules, codes or (as the case may be) guidance does not amount to market abuse.

(9) Any reference in this Law to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.

(10) In this section -

"**behaviour**" includes action or inaction,

"**investment**" includes any asset, right or interest and is to be read with section 1(3)(b) of and Schedule 1 to the Protection of Investors Law,

"**regular user**", in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

**The code.**

57. (1) The Commission may prepare and issue a code containing such provisions as the Commission considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify -

- (a) descriptions of behaviour that, in the opinion of the Commission, amount to market abuse,
- (b) descriptions of behaviour that, in the opinion of the Commission, do not amount to market abuse,
- (c) factors that, in the opinion of the Commission, are to be taken into account in determining whether or not behaviour amounts to market abuse,
- (d) an indication of the circumstances referred to in section 61(4).



(3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.

(4) The Commission may at any time alter or replace the code.

(5) If the code is altered or replaced, the altered or replacement code shall be issued by the Commission.

**Provisions included in code by reference to City Code on Takeovers and Mergers, etc.**

58. (1) The Commission may include in a code issued by it under section 57 ("**the Commission's code**") provision to the effect that in its opinion behaviour conforming with the City Code or with any other code or guidance issued in relation to takeovers and mergers issued in any other jurisdiction -

(a) does not amount to market abuse,

(b) does not amount to market abuse in specified circumstances, or

(c) does not amount to market abuse if engaged in by a specified description of person.

(2) If the Commission's code includes provision of a kind authorised by subsection (1), the Commission shall keep itself informed of the way in which -

- (a) in the case of the City Code, the Panel on Takeovers and Mergers,
- (b) in the case of a code or guidance issued in another jurisdiction, the body in that jurisdiction charged with the administration of that code or guidance,

interprets and administers the relevant provisions of the City Code or (as the case may be) that code or guidance.

- (3) In this section -

"**City Code**" means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers as it has effect at the time when the behaviour occurs, and

"**specified**" means specified in the Commission's code.

**Codes: procedure.**

59. (1) Before issuing a code under section 57, the Commission shall publish a draft of the proposed code in such manner as it considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general.

(2) The draft shall be accompanied by a statement that representations about the proposal may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the notice.

(3) Before issuing the proposed code, the Commission shall have regard to any representations made to it in accordance with subsection (2).

(4) If the Commission issues the proposed code it shall publish an account, in general terms, of -

(a) the representations made to it in accordance with subsection (2), and

(b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Commission, significant, the Commission shall (in addition to complying with subsection (4)) publish details of the difference.

(6) Subsections (1) to (5) do not apply if the Commission considers that there is an urgent need to publish the code; but in any such case -

(a) the publication of the code by the Commission under section 123 shall be accompanied by a statement that representations about the code may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the code, and

- (b) in default of publication by the Commission of such a statement as is required by paragraph (a) within a period of 28 days immediately after the date of the issue of the code, the code shall cease to have effect.

(7) The Commission may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

- (8) This section also applies to a proposal to alter or replace a code.

**Effect of code.**

60. (1) If a person behaves in a way which is described (in any code in force under section 57 at the time of the behaviour) as behaviour that, in the Commission's opinion, does not amount to market abuse, that person's behaviour is to be taken, for the purposes of this Law, as not amounting to market abuse.

(2) Otherwise, any code in force under section 57 at the time when particular behaviour occurs may be taken into account so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

**Offences and penalties in cases of market abuse.**

61. (1) Where a person ("A") -

- (a) is or has engaged in market abuse, or
- (b) by taking or refraining from taking any action has required

or encouraged another person or persons to engage in behaviour which, if engaged in by A, would amount to market abuse,

A is, subject to the provisions of subsection (2), guilty of an offence.

(2) It is a defence for A to show (for the avoidance of doubt, on a balance of probabilities) that there are reasonable grounds for the court to be satisfied that

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(a) A believed, on reasonable grounds, that A's behaviour did not fall within paragraph (a) or (b) of subsection (1), or

(b) A took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).

(3) In determining what penalty should be imposed on a person convicted of an offence under subsection (1), the court may (without limitation) have regard to -

(a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was,

(b) the extent to which that behaviour was deliberate or

reckless, and

- (c) whether the person on whom the penalty is to be imposed is an individual.

(4) A code issued under section 57 may include an indication of the circumstances in which a person is to be regarded as -

- (a) having a reasonable belief that the behaviour did not amount to market abuse, or
- (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.

**Effect on transactions.**

62. The conviction of a person of an offence under section 61 does not make any transaction void or unenforceable.

**Power to amend by Ordinance and extend scope by regulation.**

63. (1) The States may by Ordinance amend the provisions of sections 56 to 62.

(2) The Policy and Resources Committee may, subject to such exceptions, adaptations and modifications as the Committee thinks fit, by regulation extend the application of sections 56 to 62 to behaviour, activities, business, investments, products, contracts, transactions, returns, services, commodities, exchanges and markets

other than those to which section 56 applies.

(3) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances and regulations (and vice versa).

*Assistance to relevant supervisory authorities in respect of market abuse*

**Investigations etc. in support of relevant supervisory authority.**

64. (1) Where a relevant supervisory authority notifies the Commission that it requires assistance in connection with the investigation of market abuse, the Commission may exercise the investigative powers described in subsection (9) -

- (a) in relation to a person involved (within the meaning of subsection (10)), where that person is a licensee or an authorised or registered collective investment scheme, and
- (b) with the prior authority of two of its members, in relation to a person involved, where that person is not a licensee or an authorised or registered collective investment scheme.

(2) In deciding whether or not to exercise any power by virtue of subsection (1) the Commission shall take into account in particular -

- (a) whether, except where the requesting authority is a self-regulatory organisation, in the jurisdiction of the relevant

supervisory authority concerned, corresponding assistance would be given to the Commission,

- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick,
- (c) the seriousness of the case and its importance to persons in the Bailiwick,
- (d) whether the disclosure of information to or co-operation with the relevant supervisory authority concerned would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question, and
- (e) whether it is otherwise necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to give the assistance sought.

(3) The Commission may decide that it will not exercise any power by virtue of subsection (1) unless the relevant supervisory authority undertakes to make such contribution towards the costs of the exercise as the Commission considers appropriate.



(4) Where the Commission decides to exercise any power by virtue of subsection (1), it may permit, or it may direct any inspector or other competent or skilled person appointed or required to be appointed by it to permit, a representative of the relevant supervisory authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) A direction shall not be given under subsection (4) unless in the opinion of the Commission any information obtained by the relevant supervisory authority as a result of the interview will be subject to safeguards as to confidentiality equivalent to those contained in section 21(1) and (2) of the Financial Services Commission Law.

(6) The Commission may prepare a statement of its policy in respect of the conduct of interviews in relation to which a direction has been given under subsection (4).

(7) A statement of policy under subsection (6) shall be published in such manner as the Commission considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general, subject to such charges (if any) as the Commission may decide to levy to cover the costs of publication.

(8) No direction may be given under subsection (4) before the statement of policy has been published.

(9) The "**investigative powers**" are the powers conferred on the Commission by or under the provisions of any enactment -

- (a) to make site visits,
- (b) to require the provision, production and verification of information and reports and other documents,
- (c) to take copies of or extracts from documents and require an explanation of them or a statement of their whereabouts,
- (d) to appoint or require the appointment of inspectors or other competent or skilled persons,
- (e) to put questions and require explanations,
- (f) to conduct investigations and make reports, and
- (g) to require the attendance or assistance of any person, and
- (h) which are any other powers specified, or of a class or description specified, by Ordinance of the States,

and those powers -

- (i) have effect, for the purposes of this section, as if references in them to a licensee were references to a person involved, and

- (ii) where appropriate for the purposes of this section by virtue of subsection (1)(b), may be exercised by not less than two members of the Commission.

(10) For the purposes of this section -

(a) a "**person involved**" is a person -

- (i) whom a relevant supervisory authority reasonably suspects is, or has been, involved, or
- (ii) who, as a result of enquiries made, or information received, during the course of any investigation under this section, appears to the Commission or the relevant supervisory authority to be involved, or have been involved,

in market abuse, whether knowingly or otherwise,

(b) "**market abuse**" includes the offence of insider dealing under the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996<sup>o</sup>.

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<sup>o</sup> No. III of 1996 (Ordres en Conseil Vol. XXXVI, p. 488); there are amendments not material to this enactment.

**Powers of Royal Court to impose financial penalty for non-compliance.**

65. (1) If a person ("**the defaulter**") fails to comply with a requirement imposed pursuant to the exercise of the investigative powers under section 64, the person imposing the requirement may certify that fact in writing to the Royal Court.

(2) If the Royal Court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may order the defaulter to comply with the requirement in such manner and within such period as the Court thinks fit.

(3) If the defaulter fails without reasonable excuse to comply with an order made under subsection (2), the Royal Court may impose a financial penalty on the defaulter (and on any person who is the holder of a supervised role in respect of, or an officer or employee of, the defaulter) -

(a) of such amount, not exceeding £500,000 (or such other amount as the States may specify by Ordinance), and

(b) to be paid within such period,

as the court thinks fit.

(4) A financial penalty imposed under this section -

- (a) is an obligation to pay the amount of the penalty to the States of Guernsey in accordance with the terms of the relevant order of the Royal Court, and
- (b) may be recovered from the person liable to pay as a civil debt owed by that person to the States of Guernsey.

**Offences in relation to section 64.**

66. (1) A person (“A”) who knows or suspects that an investigation is being or is likely to be conducted under section 64 is guilty of an offence if -

- (a) A removes, conceals, tampers with, falsifies, destroys or otherwise disposes of a document which A knows or suspects is or would be relevant to such an investigation, or
- (b) A causes or permits such a document to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of,

unless A shows (for the avoidance of doubt, on a balance of probabilities) that A had no intention of concealing facts disclosed by the documents from the investigator.

(2) A person (“B”) who, in purported compliance with a requirement imposed on B pursuant to the exercise of the investigative powers under section 64 -

- (a) makes a statement which B knows or has reasonable cause

to believe to be false, deceptive or misleading in a material particular,

- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

*Powers to investigate criminal offences relating to market abuse*

**Powers of investigation.**

67. (1) The powers of Her Majesty's Procureur under this section are exercisable in any case in which it appears to Her Majesty's Procureur -

- (a) on reasonable grounds that there is a suspected offence

involving market abuse, wherever committed, and

- (b) that there is good reason to do so for the purpose of investigating the business, property or affairs, or any aspect of the business, property or affairs, of any person.

(2) Her Majesty Procureur may by notice in writing require the person whose business, property or affairs are to be investigated ("**the person under investigation**") or any other person whom Her Majesty's Procureur has reason to believe has relevant information to attend before Her Majesty's Procureur at a specified time and place to answer questions or give explanations or otherwise furnish information with respect to any matter relevant to the investigation.

(3) Her Majesty's Procureur may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation or any documents of a specified class or description which appear to Her Majesty's Procureur so to relate; and -

- (a) if any such documents are produced, Her Majesty's Procureur may -
  - (i) take copies or extracts from them,
  - (ii) require the person producing them to provide an explanation of any of them,

- (b) if any such documents are not produced, Her Majesty's Procureur may require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.

(4) Where, on information on oath laid by Her Majesty's Procureur, the Bailiff (within the meaning of subsection (12)) is satisfied, in relation to any documents, that there are reasonable grounds for suspecting -

- (a) that -
  - (i) a person has failed to comply with an obligation under this section to produce them,
  - (ii) it is not practicable to serve a notice under subsection (3) in relation to them, or
  - (iii) the service of such a notice in relation to them might seriously prejudice the investigation, and
- (b) that they are on premises specified in the information,

the Bailiff may issue a warrant under subsection (5).

- (5) A warrant under this subsection authorises any officer of police -



- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and
- (b) to take possession of any documents appearing to be documents specified in, or of a class or description specified in, the warrant or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(6) An officer of police executing a warrant under subsection (5) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the officer of police and by any other person specified in or of a class or description specified in the warrant.

(7) A statement made by a person ("A") in response to a requirement imposed by or under this section or a warrant granted under it -

- (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 (9) or (10) or section 109(1) (but only in relation to a requirement imposed by or under this section or a warrant granted under it),
  - (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.

(8) Nothing in this section or a warrant granted under it 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 a client.

(9) Any person who without reasonable excuse fails to comply with a requirement imposed by or under this section or a warrant granted under it is guilty of an offence.

(10) Any person (“B”) who, in purported compliance with a requirement imposed by or under this section or a warrant granted under it -

- (a) makes a statement which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which B knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(11) Where any person ("C") -

- (a) knows or suspects that an investigation by an officer of police or Her Majesty's Procureur into market abuse is being or is likely to be carried out, and
- (b) removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which C knows or suspects are or would be relevant to such an investigation,

C is guilty of an offence unless C proves (for the avoidance of doubt, on a balance of probabilities) that C had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(12) In this section the expression "**Bailiff**" includes -

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he or she is unavailable, a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal.

**Disclosure.**

68. (1) A requirement imposed by or under section 67 or a warrant granted under it has effect notwithstanding any obligation as to confidentiality or other restriction on 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.

However, subject to the provisions of subsection (3), any information disclosed to a person by virtue of this subsection may only be further disclosed by that person -

- (a) for the purposes of a regulatory investigation,
- (b) for the purposes of the investigation, prevention or detection of crime, or
- (c) 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 and whether in the Bailiwick or elsewhere.

(2) Without prejudice to any power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information to or by Her Majesty's Procureur subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

(3) Notwithstanding subsection (1) and subject to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by or on behalf of Her Majesty's Procureur may be disclosed -

- (a) for the purposes set out in subsection (1)(a), (b) or (c),
- (b) to any competent authority within the meaning of subsection (4), or
- (c) to the Director of the Revenue Service of the States of Guernsey.

(4) The following are competent authorities for the purposes of subsection (3)(b) -

- (a) any person or entity having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
- (b) any person or entity having under the law of any jurisdiction outside the Bailiwick functions corresponding to any of the functions mentioned in paragraph (a), and
- (c) any person appointed to investigate the business, property

or affairs of a person or entity in the Bailiwick or elsewhere.

**Delegation of functions of Her Majesty's Procureur.**

69. (1) Her Majesty's Procureur may, either generally or for the purposes of a particular case or class of cases, arrange for any of the functions of Her Majesty's Procureur under section 67 or 68 to be performed in the name of Her Majesty's Procureur by any other person including (without limitation) a Crown Advocate or other Advocate of the Royal Court; and references in sections 67 and 68 to Her Majesty's Procureur shall be construed accordingly.

(2) A function performed by a person pursuant to an arrangement under subsection (1) is for all purposes performed by Her Majesty's Procureur; and every decision taken or other thing done by that person pursuant to the arrangement has the same effect as if taken or done by Her Majesty's Procureur.

(3) An arrangement under subsection (1) for the performance of a function by a person -

- (a) may be varied or terminated at any time by Her Majesty's Procureur, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the performance of the function by Her Majesty's Procureur while the arrangement subsists.

(4) Any requirement imposed by or under this Part of this Law (however expressed) to provide or produce material to Her Majesty's Procureur, or to give Her Majesty's Procureur access to any material or premises, includes a requirement to provide or produce the material, or to give access to the material or premises, to any person authorised by Her Majesty's Procureur or otherwise acting for and on behalf of Her Majesty's Procureur.

In this subsection "**material**" includes information and documents.

(5) References in this Law to a person authorised by Her Majesty's Procureur are references to a person, or a member of a class or description of persons, authorised by Her Majesty's Procureur either generally or for the purposes of a particular case or class of cases.

(6) This section is without prejudice to any other enactment or rule of law.

**Offences as to "tipping off".**

70. (1) A person ("A") is guilty of an offence if -

(a) A knows or suspects that -

(i) Her Majesty's Procureur, or

(ii) any person authorised by Her Majesty's Procureur or otherwise acting for and on behalf of Her



Majesty's Procureur under section 69,

is conducting an investigation, or proposing to conduct an investigation, using the powers of Her Majesty's Procureur under the provisions of this Law, and

- (b) A discloses to any other person any document, information or other matter which is likely to prejudice that investigation or proposed investigation.

(2) Nothing in subsection (1) makes it an offence for an advocate or other legal adviser to disclose any document, information or other matter -

- (a) to, or to a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client, or

- (b) to any person -

- (i) in contemplation of, or in connection with, legal proceedings, and

- (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any document, information or other matter which is disclosed with a view to furthering any criminal

purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove (for the avoidance of doubt, on a balance of probabilities) that that person did not know or suspect that the investigation or proposed investigation was likely to be prejudiced.

(5) No person authorised to act under section 69 is guilty of an offence under this section in respect of anything done by that person in the course of acting under the said authority.

## PART VI

### DISSOLUTION OR WINDING UP OF LICENSEES, ETC

#### *Preliminary*

#### **Application of this Part.**

71. Sections 72 to 77 of this Part of this Law apply to licensees, collective investment schemes and other descriptions of persons, which are -

- (a) Guernsey companies,
- (b) Alderney companies,
- (c) Guernsey limited partnerships,

(d) Guernsey limited liability partnerships, or

(e) Guernsey foundations,

and subsections (2) and (3) of section 75 apply in addition to any licensed insurer which is an unincorporated Bailiwick body.

*Dissolution and winding up*

**Deemed insolvency of insurer with general business.**

72. (1) A licensed insurer which is a body mentioned in paragraphs (a) to (e) of section 71 and which carries on general business within the meaning of the Insurance Business Law shall be deemed -

(a) to be unable to pay its debts for the purposes of -

(i) section 407 of the Companies (Guernsey) Law, 2008  
(in the case of a Guernsey company), or

(ii) section 126 of the Companies (Alderney) Law, 1994  
(in the case of an Alderney company),

(b) to be insolvent for the purposes of the Limited Partnerships (Guernsey) Law, 1995 (in the case of a Guernsey limited partnership),

- (c) to be unable to satisfy the solvency test for the purposes of the Limited Liability Partnerships (Guernsey) Law, 2013 (in the case of a Guernsey limited liability partnership), or
- (d) to be bankrupt for the purposes of the Foundations (Guernsey) Law, 2012 (in the case of a Guernsey foundation),

if at any time it does not comply with the capital resources requirements applicable to it by virtue of rules of the Commission under sections 38A to 38C of the Insurance Business Law (as modified where applicable by the Commission under section 30(2) of that Law); and the provisions of those Laws as to dissolution or winding up (as the case may be) shall, subject to the provisions of subsection (3), have effect accordingly.

(2) Nothing in this section shall be taken as affecting the manner in which, on a dissolution or winding up, any assets or liabilities are required to be dealt with, whether by virtue of section 75 or otherwise.

(3) Notwithstanding the provisions of this section, the Royal Court or, as the case may be, the Court of Alderney may, whether to protect the interests of the public, policyholders or potential policyholders or for any other reason, and without prejudice to its powers under the provisions of the Laws mentioned in paragraphs (a) to (d) of subsection (1), decline to make an order for the dissolution or winding up of a body mentioned in paragraphs (a) to (e) of section 71 which does not comply with the capital resources requirements applicable to it by virtue of rules of the Commission under sections 38A to 38C of the Insurance Business Law (as modified where applicable by the

Commission under section 30(2) of that Law) if the Court is satisfied that it would not be reasonable or expedient to make such an order; and in any such case the Court may make such alternative order, subject to such terms and conditions, as it thinks fit.

**Dissolution or winding up of licensed insurers which are Guernsey or Alderney companies, etc, on application of policyholders.**

73. (1) Subject to the provisions of subsection (2) -

(a) the Royal Court may order the dissolution or winding up (as the case may be), in accordance with the provisions of -

(i) the Companies (Guernsey) Law, 2008, of a licensed insurer which is a Guernsey company,

(ii) the Limited Partnerships (Guernsey) Law, 1995, of a licensed insurer which is a Guernsey limited partnership,

(iii) the Limited Liability Partnerships (Guernsey) Law, 2013, of a licensed insurer which is a Guernsey limited liability partnership, or

(iv) the Foundations (Guernsey) Law, 2012, of a licensed insurer which is a Guernsey foundation, and

(b) the Court of Alderney may order the winding up, in

accordance with the provisions of the Companies (Alderney) Law, 1994, of a licensed insurer which is an Alderney company,

and the provisions of those Laws shall apply accordingly subject to the modification that a licensed insurer may be ordered to be wound up on the application of -

- (i) any 10% or more of the number of its policyholders, in a case where the insurer has more than 100 policyholders,
- (ii) any 10 or more of its policyholders, in any other case.

(2) An application -

- (a) shall not be presented to the Royal Court or, as the case may be, to the Court of Alderney except by leave of that Court, and leave shall not be granted until a prima facie case for dissolution or winding up has been established to the satisfaction of that Court and until security for costs for such amount as that Court thinks reasonable has been given, and
- (b) shall not be heard unless a copy of the application is served on the Commission not less than 7 days (or such other

period as the court may, in its absolute discretion, direct) before the day of the hearing of the application, and at the hearing of the application the Commission may make representations to the court which the court may take into account in deciding whether or not, and in what manner, to exercise its powers under the provisions of the relevant Law referred to in subsection (1).

**Dissolution or winding up on application of Commission.**

74. (1) The Commission or, with leave of the court, any other person, may present an application (a "**winding up application**") for the dissolution or winding up (as the case may be) in accordance with the Companies (Guernsey) Law, 2008, the Companies (Alderney) Law, 1994, the Limited Partnerships (Guernsey) Law, 1995, the Limited Liability Partnerships (Guernsey) Law, 2013 or (as the case may be) the Foundations (Guernsey) Law, 2012, of a body mentioned in paragraphs (a) to (e) of section 71 which is

-

- (a) a licensee or a former licensee,
- (b) an authorised or registered collective investment scheme or a former authorised or registered collective investment scheme,
- (c) a body (licensed or not) which has contravened -
  - (i) any of the provisions of this Law, the Financial

Services Commission Law or the supervisory Laws,  
or

(ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, or

(d) a body whose application, or an application in respect of whom, for a licence to carry on regulated business or for authorisation or registration of a collective investment scheme under the provisions of the supervisory Laws has been refused by the Commission.

(2) A winding up application in respect of a body may be made to the Royal Court or (as the case may be) to the Court of Alderney on the ground -

(a) that a winding up event has occurred in relation to the body,

(b) that the body is insolvent,

(c) that the body -

(i) has contravened or committed an offence under any of the provisions of this Law, the Financial Services



Commission Law or the supervisory Laws, or

- (ii) has contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,
- (d) that the Commission is unable to ascertain the financial position of the body,
- (e) that the dissolution or winding up of the body is necessary or desirable -
  - (i) for the protection of the public,
  - (ii) to counter financial crime or the financing of terrorism in the Bailiwick or elsewhere,
  - (iii) for the maintenance of confidence in the finance sector in the Bailiwick, or
  - (iv) to protect or enhance the reputation of the Bailiwick as a finance centre,
- (f) that the body has defaulted in an obligation to pay any sum

due and payable -

- (i) in respect of a deposit,
- (ii) in respect of or pursuant to the carrying on by the body of regulated business, or
- (iii) to the Commission in respect of any fee, penalty or interest,

and for the purposes of this paragraph the expression "**deposit**" includes any sum that would otherwise be excluded by section 2(3)(a), (b) or (c) of the Banking Supervision Law,

- (g) that any of the applicable minimum criteria for licensing are not or have not been fulfilled -
  - (i) in relation to the body, or
  - (ii) in relation to any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the body,
- (h) that it is just and equitable that the body should be dissolved or (as the case may be) wound up,

and for the avoidance of doubt section 73(2) does not apply in the case of an application presented by the Commission pursuant to this subsection.

(3) In any proceedings on a winding up application in respect of a body which is a licensed insurer, evidence that the insurer was insolvent -

- (a) at the close of the period to which the accounts of the insurer last deposited under section 37 of the Insurance Business Law relate, or
- (b) at any date or time specified in a requirement under any of the provisions of sections 7 to 13,

is evidence that the insurer continues to be insolvent, unless the contrary is proved.

(4) In subsections (2) and (3) "insolvent" means that the body or licensed insurer -

- (a) is unable to pay its debts for the purposes of -
  - (i) section 407 of the Companies (Guernsey) Law, 2008 (in the case of a Guernsey company), or
  - (ii) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company),

- (b) is insolvent for the purposes of the Limited Partnerships (Guernsey) Law, 1995 (in the case of a Guernsey limited partnership),
- (c) cannot satisfy the solvency test for the purposes of the Limited Liability Partnerships (Guernsey) Law, 2013 (in the case of a Guernsey limited liability partnership), or
- (d) is bankrupt for the purposes of the Foundations (Guernsey) Law, 2012 (in the case of a Guernsey foundation),

as those sections and Laws have effect in relation to the body or insurer by virtue of section 72 (where applicable).

(5) Where an order for the dissolution or winding up of a body is made by virtue of this section, the provisions of the Laws specified in subsection (1) apply accordingly.

(6) The provisions of this section are in addition to and not in derogation from the provisions of the Laws specified in subsection (1) and any other provision of law relating to dissolution or winding up.

**Dissolution or winding up, etc. of insurer with long term business.**

75. (1) Notwithstanding the provisions of -

- (a) Part XXII of the Companies (Guernsey) Law, 2008 or Part XVII of the Companies (Alderney) Law, 1994, a licensed insurer which is a Guernsey company or (as the case may be) an Alderney company and which carries on long term business shall not be wound up voluntarily,
- (b) section 28 of the Limited Partnerships (Guernsey) Law, 1995, a licensed insurer which is a Guernsey limited partnership and which carries on long term business shall not be dissolved except by order of the Royal Court for the dissolution of the partnership under section 29 of that Law,
- (c) section 85 of the Limited Liability Partnerships (Guernsey) Law, 2013, a licensed insurer which is a Guernsey limited liability partnership and which carries on long term business shall not be wound up except by order of the Royal Court for the winding up of the partnership under section 86(1) of that Law, and
- (d) paragraphs 22 and 23 of Schedule 2 to the Foundations (Guernsey) Law, 2012, a licensed insurer which is a Guernsey foundation and which carries on long term business shall not be wound up except by order of the Royal Court for the winding up of the foundation under paragraph 24 of that Schedule.

(2) Subject to the provisions of subsection (3), in any dissolution or winding up of a licensed insurer which is -

- (a) a body mentioned in paragraphs (a) to (e) of section 71, or
- (b) an unincorporated Bailiwick body,

and which carries on long term business within the meaning of the Insurance Business Law -

- (i) the assets representing the fund maintained by the insurer in respect of its long term business shall be available only for meeting the liabilities of the insurer attributable to that business,
- (ii) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other business.

(3) Where the value of the assets mentioned in subparagraph (i) or (ii) of subsection (2) exceeds the amount of the liabilities mentioned in that subparagraph, the restriction imposed by subsection (2) shall not apply to so much of those assets as represents the excess.

**Continuation of long term business of insurer being dissolved or wound up, etc.**

76. (1) This section has effect in relation to the dissolution or winding up

of a licensed insurer which is a body mentioned in paragraphs (a) to (e) of section 71 and which carries on long term business within the meaning of the Insurance Business Law.

(2) The liquidator shall, unless the Royal Court (in the case of a licensed insurer which is a Guernsey company, Guernsey limited partnership, Guernsey limited liability partnership or Guernsey foundation) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) orders otherwise, carry on the long term business of the insurer with a view to its being transferred as a going concern to another body, whether an existing body or a body formed for that purpose; and in carrying out that business the liquidator may agree to the variation of any contracts of insurance in existence when the Act of Court ordering the dissolution or winding up is made, but shall not effect any new contracts of insurance.

(3) The Royal Court (in the case of a licensed insurer which is a Guernsey company, Guernsey limited partnership, Guernsey limited liability partnership or Guernsey foundation) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may -

- (a) if it thinks fit and subject to such terms and conditions (if any) as it may determine, reduce the value of the contracts made by the insurer in the course of carrying on its long term business,
- (b) on the application of the liquidator or the Commission, appoint an independent actuary to investigate the long term business of the insurer and to report to the liquidator

and to the Commission on the desirability or otherwise of that business being continued and on any reduction in the value of the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(4) The provisions of section 44 of the Insurance Business Law do not apply in the course of the dissolution or winding up of a licensed insurer which carries on long term business and which would be "the transferor" for the purposes of that section.

**Reduction of contracts as alternative to dissolution or winding up of licensed insurer.**

77. In the case of a licensed insurer which has been proved to be insolvent within the meaning of section 74(4), the Royal Court (in the case of a licensed insurer which is a Guernsey company, Guernsey limited partnership, Guernsey limited liability partnership or Guernsey foundation) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, if it thinks it proper to do so, and having regard to the best interests of the insurer's policyholders, reduce the amount of the contracts of the insurer on such terms and subject to such conditions as the Court thinks just, in place of ordering the dissolution or winding up of the insurer.

*Fraudulent trading and trust applications*

**Responsibility for fraudulent trading disclosed in course of dissolution, winding up or administration.**

78. (1) If, in the course of the dissolution or winding up (as the case may



be) of a licensee or collective investment scheme, or the administration under Part VII of this Law or Part XXI of the Companies (Guernsey) Law, 2008 of a licensee or collective investment scheme, it appears that any regulated business of the licensee or any business of the scheme has been carried on -

- (a) with intent to defraud creditors, members, customers or former customers of the licensee or the scheme or creditors of any other person, or
- (b) for any fraudulent purpose,

the Royal Court or (in the case of a licensee or scheme which is an Alderney company or which is otherwise within the jurisdiction of that Court) the Court of Alderney, on the application of the liquidator or any creditor, member, customer or former customer of the licensee or the scheme (or, with leave of the court, any other person), may, if the court thinks it proper to do so, and after giving the person the opportunity to be heard, declare that any person who was knowingly party to the carrying on of that business in that manner is personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the licensee or the scheme as the court may direct.

(2) Where the Royal Court or the Court of Alderney makes a declaration under subsection (1), it may make such order, containing such incidental, ancillary, consequential and supplementary provision, and on such terms and conditions and subject to such penalty, as it thinks proper for the purpose of giving effect to the declaration, including, without limitation, an order directing that -

- (a) any money or property shall be repaid or restored to the licensee or collective investment scheme or to such other person as may be ordered by the court,
- (b) any sum be contributed to the assets of the licensee or collective investment scheme or such other person as may be ordered by the court, or
- (c) any interest be paid in respect of any such money, property or sum at such rate and in respect of such period as the court may direct.

(3) In the case of a licensed insurer which carries on long term business within the meaning of the Insurance Business Law, where the Royal Court or the Court of Alderney makes an order under subsection (2) directing that any money or property shall be repaid or restored to the licensed insurer, or that any sum be contributed to its assets, or that any interest be paid in respect of any such money, property or sum, then, if and in so far as the wrongful act which is the reason for the making of the order related to assets representing a fund maintained by the licensed insurer in respect of that long term business, the court shall include in the order a direction that the money, property, contribution or interest shall be treated for the purposes of this Law and the Insurance Business Law as assets of that fund, and the provisions of this Law and the Insurance Business Law shall have effect accordingly.

(4) For the avoidance of doubt, the provisions of this section -

- (a) have effect notwithstanding that the person concerned may be liable to other civil action or to criminal prosecution in respect of the matters on the ground of which a declaration under subsection (1) may be made, and
- (b) are in addition to and not in derogation from any other powers in respect of the person concerned (including, without limitation, powers under the provisions of this Law, the Insurance Business Law, the Companies Laws and the Trusts (Guernsey) Law, 2007).

(5) A person who is knowingly party to the carrying on of any regulated business of a licensee or any business of a collective investment scheme with such intent or for such purpose as is mentioned in subsection (1) is guilty of an offence.

**Power to make applications under Trusts Law.**

79. The Commission may, where it considers it necessary or desirable to do so

-

- (a) in the interests of the public, or
- (b) in the interests of the reputation of the Bailiwick as a finance centre,

make an application under section 69(1) of the Trusts (Guernsey) Law, 2007<sup>P</sup> for the making, rescission or variation by the Royal Court of an order or declaration or a new or further order or declaration under that section.

## PART VII

### ADMINISTRATION AND INTERVENTION

#### *Interpretation*

#### **Interpretation of Part VII.**

80. In this Part of this Law, unless the contrary intention appears -

**"administered person"** means any person or entity which -

- (a) is a licensee or authorised or registered collective investment scheme (but only includes a licensed banking institution where the institution is incorporated in the Bailiwick),
- (b) is not a person or entity mentioned in paragraph (a) but carries on regulated business,
- (c) applies or has applied for a licence under any of the supervisory Laws or for an authorisation or registration of

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<sup>P</sup> Order in Council No. III of 2008.

a collective investment scheme under section 8 of the Protection of Investors Law, or

- (d) is a person or entity in respect of which such an application is or has been made,

**"administration management order"** : see section 81(1),

**"administration manager"** : see section 81(2),

**"undue risk"** includes -

- (a) an investment or financial risk that a reasonable person informed of the investment or financial strategy and potential returns of the administered person (or, in the case of a protected cell company, any cell thereof) would consider excessive,
- (b) any risk which has led or could lead to a partial or complete loss of assets held, managed, administered, controlled or operated by the administered person (or, in the case of a protected cell company, any cell thereof) and which has arisen or could arise from a lack of proper management or administration of the business of the administered person (or the cell, as the case may be), or

- (c) any other risk which has arisen or could arise from a lack of proper management or administration of the business of the administered person (or, in the case of a protected cell company, any cell thereof).

*Administration*

**Administration management orders.**

- 81. (1) Subject to the provisions of this section, if the Royal Court -
  - (a) is satisfied that an administered person (or, in the case of a protected cell company, any cell thereof) -
    - (i) has, after -
      - (A) the 10<sup>th</sup> December 2008 (the date of commencement of the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008) in the case of a relevant person within the meaning of that Ordinance as it had effect immediately prior to the date of commencement of this Law, or
      - (B) the date of commencement of this Law, in any other case,

performed an act or made an omission, or

- (ii) will or is likely to perform, continue or repeat any act or make, continue or repeat any omission,

that has caused or is likely to cause undue risk to customers or potential customers, and considers that the making of an order under this section would achieve the purpose of the protection of customers or potential customers, or

- (b) is of the opinion that it is necessary or desirable that an order should be made under this section in relation to an administered person (or, in the case of a protected cell company, any cell thereof) for the purpose of the protection of the public or the reputation of the Bailiwick as a finance centre,

the Royal Court may make an order under this section (an "**administration management order**") in relation to the administered person (or, in the case of a protected cell company, any cell thereof).

(2) An administration management order is an order directing that, during the period for which the order is in force, the business, property and affairs of the administered person (or the cell, as the case may be) shall be managed by a person (an "**administration manager**") appointed for the purpose by the Royal Court.

(3) For the avoidance of doubt and without limitation, the Royal Court may appoint the Commission (or any officer, servant or agent thereof) to be the administration manager.

(4) Subject to section 97, an administration management order under subsection (1) may be made notwithstanding that a winding up event has occurred in relation to the administered person, and, if an administration management order is so made, then the declaration, appointment, order, resolution, winding up, proceedings, measure or other procedure comprising the winding up event shall, unless the Royal Court orders otherwise, be discharged or suspended or otherwise cease to have effect subject to such terms and conditions as the Royal Court thinks fit.

**Application for administration management order.**

82. (1) An application for an administration management order may only be made by the Commission.

(2) The Royal Court, on hearing an application for an administration management order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim administration management order or any other order it thinks fit.



(3) An interim order made under subsection (2)(c) may, without limitation, restrict the performance of any functions of the administered person or the holders of supervised roles in respect of it, or its officers or employees, or any other person (including, without limitation, any person controlling the business, property and affairs of the administered person) specified or of a class or description specified in the order, whether by reference to the consent of the Royal Court or otherwise.

(4) Notice of an application to the Royal Court for an administration management order in respect of an administered person (or, in the case of a protected cell company, any cell thereof) shall, unless the Royal Court orders otherwise, be served on -

- (a) the administered person,
- (b) in the case of an incorporated cell company, each incorporated cell of the incorporated cell company,
- (c) in the case of an incorporated cell, its incorporated cell company, and
- (d) such other persons, if any, as the Royal Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Royal Court before the order is made.

(5) Notice of an application for an administration management order shall be -

- (a) served as mentioned in subsection (4), and
- (b) published by the Commission in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine,

at least 2 business days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

**Effect of application for administration management order.**

83. (1) Subject to section 97, during the period between the presentation of an application for an administration management order and ending with the making of such an order or the dismissal of the application -

- (a) no resolution may be passed or order made for the dissolution or winding up of the administered person,
- (b) no proceedings may be commenced or continued against the administered person except with the leave of the Royal Court and subject to such terms and conditions as the Royal Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests

(including security interests within the meaning of the Security Interests (Guernsey) Law, 1993)<sup>9</sup> and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Royal Court for the presentation of an application for the dissolution or winding up of the administered person.

(3) Subsection (1)(a) of this section and subsection (2)(a) of section 84 apply in respect of -

- (a) the giving by a partner of a partnership (other than a limited partnership or limited liability partnership) of notice to the other partners of intention to dissolve the partnership,
- (b) the making of an agreement by the partners of a limited partnership that the limited partnership shall be dissolved,
- (c) the exercise by the founder of a foundation of a power to terminate the foundation, and

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<sup>9</sup> Order in Council No. III of 1993.

- (d) the making of an agreement of the members of a limited liability partnership that the limited liability partnership shall be wound up or dissolved,

as they apply in respect of the passing of a resolution for the winding up of a company.

**Effect of administration management order.**

84. (1) On the making of an administration management order any application for the dissolution or winding up of an administered person shall be dismissed.

(2) During the period for which an administration management order is in force -

- (a) no resolution may be passed or order made for the dissolution or winding up of the administered person (and see section 83(3)), and
- (b) no proceedings may be commenced or continued against the administered person except with the consent of the administration manager or the leave of the Royal Court and subject (where the Royal Court gives leave) to such terms and conditions as the Royal Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests (including security interests within the meaning of the Security Interests (Guernsey) Law, 1993)

and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(3) This section is subject to the provisions of section 97 in the case of the administration of a cell of a protected cell company.

**Notice of administration management order to appear in correspondence, etc.**

85. (1) All correspondence of an administered person (or a cell of a protected cell company) subject to an administration management order shall contain the administration manager's name and a statement that the business, property and affairs of the administered person (or of the cell, as the case may be) are being managed by the administration manager, unless this is readily ascertainable -

- (a) from the context of the correspondence, or
- (b) from a course of dealing between the administered person and the person to whom the correspondence is addressed.

(2) Where an administered person (or a cell of a protected cell company) subject to an administration management order has a website, the administration manager's name and a statement that the business, property and affairs of the administered person (or of the cell, as the case may be) are being managed by the administration manager shall appear in a reasonably prominent location on that website.

(3) An administered person which fails to comply with this section is guilty of an offence.

**General powers of administration manager.**

86. (1) Subject to any directions given by the Royal Court, the administration manager may do all such things as may be necessary or expedient for the management of the business, property and affairs of the administered person (or, as the case may be, of the cell).

(2) Without prejudice to subsection (1), and unless the Royal Court orders otherwise, the administration manager has the powers specified in section 100.

(3) The administration manager may apply to the Royal Court for directions in relation to -

(a) the extent or performance of any function, and

(b) any matter arising in the course of the administration,

and on such an application the Royal Court may make such order, on such terms and conditions, as it thinks fit.

(4) For the avoidance of doubt, the powers conferred on the Royal Court by subsection (3) are, except where express provision to the contrary is made by any enactment, subject to the provisions of Part XXVII of the Companies (Guernsey) Law, 2008<sup>r</sup> ("protected cell companies").

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

(5) In performing his or her functions the administration manager is deemed to act as the administered person's agent (or the protected cell company's agent, in the case of a cell) but does not incur personal liability except to the extent that he or she is fraudulent, reckless or grossly negligent, or acts in bad faith.

(6) A person dealing with the administration manager in good faith is not concerned to enquire whether the administration manager is acting within his or her powers.

(7) The administration manager also has power -

(a) to remove any holder of a supervised role in respect of, or officer or employee of, the administered person (or the protected cell company, in the case of a cell) and to appoint any person to be the holder of a supervised role in respect of, or an officer or employee of, the administered person (or the protected cell company, in the case of a cell), whether to fill a vacancy or otherwise, and

(b) to call any meeting of members, creditors, customers, partners, limited partners or general partners of the administered person (or the cell, as the case may be).

(8) In the case of an incorporated cell company (or an incorporated cell of an incorporated cell company), the administration manager also has power -

- (a) to remove any holder of a supervised role in respect of, or officer or employee of, any of its incorporated cells (or its incorporated cell company, as the case may be) and to appoint any person to be the holder of a supervised role in respect of, or an officer or employee of, any of its incorporated cells (or its incorporated cell company, as the case may be), whether to fill a vacancy or otherwise,
- (b) to call any meeting of members, creditors or customers of any of its incorporated cells (or of its incorporated cell company, as the case may be).

**General duties of administration manager.**

87. (1) The administration manager shall, on appointment, take into the custody of, or under the control of, the administration manager all the business, property and affairs of the administered person (or the cell, as the case may be) or to which the administered person (or the cell, as the case may be) is or appears to be entitled.

(2) The administration manager shall manage the business, property and affairs of the administered person (or the cell, as the case may be) in accordance with any directions given by the Royal Court.

**Co-operation with and by administration manager.**

88. (1) Any function conferred on the administered person or the holders of supervised roles in respect of, or the officers or employees of, the administered person,



whether by this Law or the supervisory Laws, by the Companies Laws, or by the memorandum, articles or other constitutive documents or otherwise, which could be performed in such a way as to interfere with the performance by the administration manager of his or her functions may not be performed except with the consent of the administration manager, which may be given either generally or in relation to particular cases.

(2) Any function conferred on an incorporated cell or the holders of supervised roles in respect of, or the officers or employees of, an incorporated cell, whether by this Law or the supervisory Laws, by the Companies Laws or by the memorandum or articles or otherwise, which could be performed during the administration under this Part of this Law of its incorporated cell company in such a way as to interfere with the performance by the administration manager of his or her functions may not be performed except with the consent of the administration manager, which may be given either generally or in relation to particular cases.

(3) Any function conferred on an incorporated cell company or the holders of supervised roles in respect of, or the officers or employees of, an incorporated cell company, whether by this Law or the supervisory Laws, by the Companies Laws or by the memorandum or articles or otherwise, which could be performed during the administration under this Part of this Law of any of its incorporated cells in such a way as to interfere with the performance by the administration manager of his or her functions may not be performed except with the consent of the administration manager, which may be given either generally or in relation to particular cases.

(4) Any function conferred on a protected cell company or the holders of supervised roles in respect of, or the officers or employees of, a protected cell company, whether by this Law or the supervisory Laws, by the Companies Laws or by the memorandum or articles or otherwise, which could be performed during the administration under this Part of this Law of any of its cells in such a way as to interfere with the performance by the administration manager of his or her functions may not be performed except with the consent of the administration manager, which may be given either generally or in relation to particular cases.

(5) The administration manager of an incorporated cell company shall co-operate, in the management of the business, property and affairs of the incorporated cells of the incorporated cell company, with -

- (a) the incorporated cells, and
- (b) the holders of supervised roles in respect of, or the officers or employees of, the incorporated cells,

to the extent that such co-operation will not interfere with the performance of the functions of the administration manager.

(6) The administration manager of an incorporated cell shall co-operate, in the management of the business, property and affairs of the incorporated cell company, with -

- (a) the incorporated cell company, and

- (b) the holders of supervised roles in respect of, or the officers or employees of, the incorporated cell company,

to the extent that such co-operation will not interfere with the performance of the functions of the administration manager.

**Discharge or variation of administration management order.**

89. (1) The administration manager may at any time apply to the Royal Court for the administration management order to be discharged or varied.

(2) The administration manager shall apply to the Royal Court for the administration management order to be discharged or varied if it appears to him or her that -

- (a) the purpose of the order has been achieved or is incapable of achievement, or
- (b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) Notice of an application for the discharge or variation of an administration management order shall be -

- (a) served on the administered person and the Commission and such other persons, if any, as the Royal Court may direct, including (without limitation) any creditor, and
- (b) published by the administration manager in La Gazette Officielle or in such other manner and for such period as the Commission may determine,

at least 2 business days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

(4) A person served with a notice of the application under subsection (3) may make representations at the hearing of the application.

(5) The Royal Court, on hearing an application under this section for the discharge or variation of an administration management order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order it thinks fit.

(6) Where an administration management order is discharged or varied under this section the administration manager shall, within such time as the Royal Court may direct, send a copy thereof to such persons as the Royal Court may direct.

**Remuneration, and swearing in, of administration manager.**

90. (1) The administration manager's remuneration, and any costs, fees, charges and expenses properly incurred in the administration under this Part of this Law of an administered person, are payable from the administered person's assets (or the cellular assets attributable to the cell in respect of which the administration manager was appointed, as the case may be) in priority to all other claims.

(2) The administration manager's fees shall be fixed by, or calculated on a basis determined by, the Royal Court.

(3) An administration manager shall be sworn before the Royal Court when the Royal Court makes the administration management order or at any other time directed by the Royal Court.

**Vacation of office.**

91. (1) The administration manager -

(a) may at any time be removed from office by order of the Royal Court (whether on application by the Commission or otherwise),

- (b) may at any time resign from office by giving notice of resignation to the Royal Court, and
- (c) shall vacate office if the administration management order is discharged.

(2) Where there is a vacancy in the office of administration manager the Royal Court may, on the application of the Commission, appoint a replacement.

**Release of administration manager.**

92. (1) A person who has ceased to be the administration manager of an administered person (or a cell, as the case may be) has release with effect from –

- (a) in the case of a person who has died, the time at which notice is given to the Royal Court that the deceased has by reason of death ceased to hold office, or
- (b) in any other case, such time as the Royal Court may determine.

(2) Where a person has release under this section that person is, with effect from the time of release, discharged from all liability both in respect of that person's acts and omissions in the administration and otherwise in relation to that person's conduct as administration manager, except to the extent that that person has incurred personal liability by virtue of section 86(5).

(3) However, nothing in this section prevents the exercise, in relation to a person who has release under this section, of the Royal Court's powers under section 98.

**Information to be given by administration manager.**

93. (1) Where an administration management order is made, the administration manager shall -

- (a) immediately send to the administered person (or, in the case of a cell of a protected cell company, to the protected cell company) and to the Commission, and publish in La Gazette Officielle or in such other manner and for such period as the Commission may determine, notice of the order, and
- (b) within a period of 28 days after the day of the making of the order, unless the Royal Court orders otherwise, send notice of the order to -
  - (i) all creditors of the administered person (or the cell, as the case may be), so far as the administration manager is aware of their addresses,
  - (ii) where the order is in respect of an incorporated cell company, its incorporated cells,

- (iii) where the notice is in respect of an incorporated cell, its incorporated cell company, and
- (iv) in the case of a Guernsey company or an Alderney company, the Registrar of Companies or the Alderney Registrar, as the case may be.

(2) Without prejudice to subsection (1), where an administration management order is made the administration manager shall, within such time as the Royal Court may direct, send a copy of the order to such other persons as the Royal Court may direct.

**Statement of affairs to be submitted to administration manager.**

94. (1) Where an administration management order is made, the administration manager may require all or any of the persons mentioned in subsection (3) to make out and submit a statement (a "**statement of affairs**") in such form as the administration manager may require as to the affairs of the administered person (or cell, as the case may be).

(2) The statement of affairs shall be verified by affidavit of the persons required to submit it (or in such other manner as the administration manager may require) and shall show -

- (a) particulars of the assets, debts and liabilities of the administered person (or cell, as the case may be),



- (b) the names and addresses of its creditors,
  - (c) any securities held by any of its creditors,
  - (d) the dates when those securities were respectively given,  
and
  - (e) such further or other information as the administration manager may require.
- (3) The persons referred to in subsection (1) are -
- (a) those who are or have been the holders of supervised roles in respect of, or officers of, the administered person,
  - (b) those who have taken part in the formation of the administered person at any time within the period of one year before the date of the administration order ("**the preceding year**"),
  - (c) those who are in the employment of the administered person or have been in its employment within the preceding year, and are in the administration manager's opinion capable of giving the information required,
  - (d) those who are or have within the preceding year been the

holders of supervised roles in respect of, or officers of or in the employment of, a body which is, or within the preceding year was, the holder of a supervised role in respect of, or an officer of, the administered person.

(4) In subsection (3) -

- (a) "employment" includes employment under a contract for services, and
- (b) in the case of a cell of a protected cell company, references to the administered person include references to the protected cell company.

(5) Where any persons are required under the provisions of this section to submit a statement of affairs to the administration manager, they shall do so (subject to the next subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administration manager.

(6) The administration manager, if he or she thinks fit, may -

- (a) at any time release a person from an obligation imposed by or under the provisions of subsection (1) or (2), or
- (b) either when giving notice under subsection (5) or subsequently, extend the period mentioned in that

subsection,

and where the administration manager has refused to exercise a power conferred by this subsection, the Royal Court, if it thinks fit, may exercise it.

(7) If a person without reasonable excuse fails to comply with any obligation imposed by or under the provisions of this section, that person is guilty of an offence.

(8) Nothing in 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 a client.

(9) A requirement imposed by an administration manager under this section has effect notwithstanding any obligation as to confidentiality or other restriction on 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.

**Protection of interests of customers, etc.**

95. (1) At any time when an administration management order is in force, a customer, creditor or member of the administered person (or the cell, as the case may be) or the Commission may apply to the Royal Court for an order under this section on the ground -

- (a) that the administered person's (or the cell's, as the case may be) business, property and affairs are being or have been managed by the administration manager in a manner which is unfairly prejudicial to the interests of its customers, creditors or members generally, or of some section of its customers, creditors or members (which must include, except where the applicant is the Commission, the applicant),
- (b) that any actual or proposed act or omission of the administration manager is or would be so prejudicial, or
- (c) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Royal Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular –

- (a) regulate the future management by the administration manager of the business, property and affairs of the administered person (or the cell, as the case may be),
- (b) require the administration manager to refrain from performing, continuing or repeating any act or from making, continuing or repeating any omission complained of by the applicant, or to do or continue an act which the applicant has complained the administration manager has omitted to do,
- (c) require the summoning of a meeting of customers, creditors or members for the purpose of considering such matters as the Royal Court may direct, or
- (d) vary or discharge the administration management order and make such consequential provision as the Royal Court thinks fit.

(4) Where the administration management order is varied or discharged under this section the administration manager shall, within such time as the Royal Court may direct, send a copy of the order of variation or discharge to such persons as the Royal Court may direct.

(5) An application for an order under this section may also be made, with leave of the Royal Court, by a person other than one described in subsection (1).

**Administration of incorporated cell company not to prejudice its incorporated cells.**

96. The administration of an incorporated cell company under this Part of this Law shall be carried on in such a way as not to prejudice the business, property and affairs of any of its incorporated cells and accordingly, during the administration, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

**Cells of protected cell companies: administration subject to liquidation.**

97. (1) An administration management order in respect of a cell of a protected cell company -

(a) may not be made if -

- (i) a liquidator has been appointed to act in respect of the protected cell company,
- (ii) an application has been made for the winding up of the protected cell company, or
- (iii) the protected cell company has passed a resolution for voluntary winding up,

- (b) shall cease to have effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(2) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to an administration management order shall be effective without the leave of the Royal Court.

(3) For the avoidance of doubt, notwithstanding any restriction or limitation placed on administration management orders in respect of the cells of a protected cell company, a protected cell company may be subject to an administration management order in the same manner as any other company.

**Remedy against delinquent persons.**

98. (1) Where in the course of the administration under this Part of this Law or under Part XXI of the Companies (Guernsey) Law, 2008 or the dissolution or winding up of an administered person, it appears that any person described in subsection (2) -

- (a) has appropriated or otherwise misapplied any of the administered person's assets,
- (b) has become personally liable for any of the administered person's debts or liabilities, or
- (c) has otherwise been guilty of any misfeasance or breach of

fiduciary duty in relation to the administered person,

then any of the following persons may apply to the Royal Court for an order under this section -

- (i) any customer, creditor, member or partner of the administered person,
- (ii) the administration manager (or administrator, in the case of administration under Part XXI of the Companies (Guernsey) Law, 2008),
- (iii) any liquidator of the administered person,
- (iv) any other person conducting the dissolution or winding up of the administered person or appointed to wind up its business, property and affairs, or
- (v) the Commission.

(2) The persons mentioned in subsection (1) are -

- (a) any past or present holder of a supervised role in respect of, or officer or employee of, the administered person,



- (b) any person who -
  - (i) is a licensee or former licensee who provides or has provided services to the administered person, or
  - (ii) is a past or present holder of a supervised role in respect of, or an officer or employee of, a licensee or former licensee described in subparagraph (i), and
- (c) any other persons who, directly or indirectly, are or have been in any way concerned in or have participated in the promotion, formation or management of the administered person.

(3) On an application under subsection (1), the Royal Court may examine the conduct of the person concerned and may order the person concerned -

- (a) to repay, restore or account for such money or such property,
- (b) to contribute such sum to the administered person's assets,
- (c) to pay interest upon such amount, at such rate and in respect of such period,

as the Royal Court may direct, and, where the Royal Court is satisfied that the order is in

the best interests of the administered person's customers, creditors, members or partners, the Royal Court may make such other order as it thinks fit in respect of the default, whether by way of indemnity, compensation, remedial action or otherwise.

(4) An order of the Royal Court under this section 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 Royal Court thinks proper.

(5) For the avoidance of doubt, the provisions of this section -

- (a) apply in respect of the administration under this Part of this Law or under Part XXI of the Companies (Guernsey) Law, 2008 or the dissolution or winding up of any administered person (whether or not a company),
- (b) are in addition to and not in derogation from any other powers in respect of the person in default (including, without limitation, powers under the provisions of this Law, the Insurance Business Law, the Companies Laws and the Trusts (Guernsey) Law, 2007), and
- (c) have effect notwithstanding that the person in default may be liable to other civil action or to criminal prosecution in respect of the matters on the ground of which an order under this section may be made.

(6) In the case of a licensed insurer which carries on long term business within the meaning of the Insurance Business Law, section 78(3) applies in relation to an order of the Royal Court under this section as it applies in relation to an order of the Royal Court or the Court of Alderney under section 78(2).

(7) An application for an order under this section may also be made, with leave of the Royal Court, by a person other than one described in subsection (1).

(8) In this section "dissolution or winding up" includes any winding up event in relation to an administered person and any proceedings, measure or other procedure resulting therefrom.

#### *Intervention*

#### **Injunctions.**

99. (1) If on the application of the Commission the appropriate Court is satisfied that -

- (a) there is a reasonable likelihood that an administered person will perform any act or make any omission that is likely to cause undue risk to customers, the public or the reputation of the Bailiwick as a finance centre, or
- (b) an administered person has or may have performed any act or made any omission that has caused or is likely to have caused undue risk to customers, the public or the

reputation of the Bailiwick as a finance centre and there is a reasonable likelihood that the act or omission will continue or be repeated,

the appropriate Court may grant an injunction restraining the act or omission.

(2) If on the application of the Commission the appropriate Court is satisfied that an administered person has or may have performed any such act or made any such omission as is described in subsection (1), the appropriate Court may grant an injunction restraining the administered person or any of the holders of supervised roles in respect of, or officers or employees of, the administered person or any other person controlling the business, property or affairs of the administered person or otherwise specified or of a class or description specified in the injunction from disposing of or otherwise dealing with any assets or class or description of assets while the suspected act or omission is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and subject to such penalty, and may contain such incidental, ancillary, consequential or supplementary provision, as the appropriate Court thinks fit including, without limitation, provision for the appointment of a receiver or other person to exercise such powers as the appropriate Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

The provisions of section 48 apply in respect of a receiver or other person

appointed under this subsection as they apply in respect of a receiver appointed under section 46 or 47.

(4) The powers conferred upon the Royal Court by the provisions of this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>s</sup>; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) apply in relation to injunctions of the Royal Court under this section.

(5) An application by the Commission for an injunction under this section may, with the approval of the appropriate Court, and on such terms and conditions as the appropriate Court may direct, be made ex parte.

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

- (a) the Court of Alderney, where the person against whom the injunction under this section is sought is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person against whom the injunction under this section is sought is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

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<sup>s</sup> Ordres en Conseil Vol. XXX, p. 145.

*Administration and intervention: general provisions*

**Powers of administration manager.**

100. (1) Without prejudice to section 86(1), and unless the Royal Court orders otherwise, the powers of the administration manager of an administered person referred to in section 86(2) are the powers set out below in this section.

In the application of this section -

- (a) in relation to the administration manager of an administered person, the words "he or she" and related expressions refer to the administration manager, and
- (b) in relation to a cell of a protected cell company, the expression "administered person" includes a cell of a protected cell company or, where necessary, the protected cell company itself.

(2) Power to take possession of, collect and get in the business, property and affairs of the administered person and, for that purpose, to take such proceedings as may seem to him or her expedient.

(3) Power to sell or otherwise dispose of the business, property and affairs of the administered person by public auction or private contract.

(4) Power to raise or borrow money and grant security for that purpose over the business, property and affairs of the administered person.

(5) Power to appoint an Advocate or other professionally qualified person to assist in the performance of his or her functions.

(6) Power to bring or defend any action or other legal proceedings in the name and on behalf of the administered person or, where the administration under this Part of this Law relates to the cell of a protected cell company, in the name and on behalf of the company in so far as the matter relates to the business, property and affairs of the cell.

(7) Power to refer to arbitration any question affecting the administered person.

(8) Power to effect and maintain insurances in respect of the business, property and affairs of the administered person.

(9) Power to use the administered person's seal where the administered person has a seal.

(10) Power to do all acts and to execute in the name and on behalf of the administered person any receipt or other document.

(11) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the administered person.

(12) Power to appoint any agent to do any business which he or she is unable to do or which can more conveniently be done by an agent and power to employ and dismiss servants.

(13) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the business, property and affairs of the administered person.

(14) Power to make any payment which is necessary or incidental to the performance of his or her functions.

(15) Power to carry on the business and affairs of the administered person.

(16) Power to establish subsidiaries of the administered person.

(17) Power to transfer to subsidiaries of the administered person the whole or any part of the business, property and affairs of the administered person.

(18) Power to grant or accept a surrender of a lease or tenancy of any of the property of the administered person, and to take a lease or tenancy of any property required or convenient for the business and affairs of the administered person.

(19) Power to make any arrangement or compromise in the name and on behalf of the administered person.



(20) Power to call up any uncalled capital of the administered person.

(21) Power to rank and claim in the bankruptcy, insolvency, sequestration, winding up, liquidation or dissolution of any person indebted to the administered person, or in désastre or saisie proceedings in relation to any such person, and to receive dividends, and to accede to trust deeds for the creditors of any such person.

(22) Power to present or defend an application for the winding up, liquidation or dissolution of the administered person.

(23) Power to change the situation of the administered person's registered office except where the administration under this Part of this Law is in respect of the cell of a protected cell company.

(24) Power to do all other things incidental to the exercise of the foregoing powers.

**Applications to court under Companies Law.**

101. The administration manager of an administered person which is a protected cell company or a cell of such a company may make an application to the Royal Court under section 458 of the Companies (Guernsey) Law, 2008 ("arrangements between cells affecting cellular assets, etc") for the making, and subsequent variation, rescission, replacement or confirmation, of an order in respect of the company under subsection (3) of that section.

**Administration and intervention: Ordinances.**

102. (1) The States may by Ordinance -

- (a) amend this Part of this Law, and
- (b) make such other provision as they think fit for the purpose of carrying this Part of this Law into effect.

(2) An Ordinance under this section may, without limitation, empower any court to make an order -

(a) authorising the Commission, or any other person appointed by the Commission, to intervene in or administer the business, property or affairs of any person or entity which -

- (i) is an administered person within the meaning of section 80 as it has effect from time to time, or
- (ii) is of any other class or description specified in the Ordinance, and

(b) prohibiting any such person or entity from -

- (i) undertaking any business or class or description of business, or

- (ii) undertaking any business, or class or description of business, except in accordance with such terms and conditions as the court may order.

(3) An Ordinance under this section may also, without limitation -

- (a) empower any court to make an order enabling the Commission, or any person appointed by the Commission, or any other person or class or description of person specified in the Ordinance, to intervene in or administer the business, property or affairs of any person or entity -

- (i) generally or in relation to such business, property or affairs of the person or entity as may be specified in the order,

- (ii) for such period as may be so specified, and

- (iii) subject to such terms and conditions as may be so specified,

- (b) empower the Commission, or any person appointed by the Commission, or any other person or class or description of person specified in the Ordinance, to apply for such an order,

- (c) specify the grounds upon which applications may be made,
- (d) make provision relating to appeals,
- (e) make provision relating to the powers that may be exercised by any person under such an order including, without limitation, powers -
  - (i) to ensure that the business, property or affairs of a person or entity are properly managed,
  - (ii) to restrict the activities of any person or entity,
  - (iii) to require any person or entity to take specific actions, and
  - (iv) to disclose information about any person or entity,
- (f) subject to the provisions of section 121(7), make provision as to the obligations, liabilities, remedies, penalties, sanctions and other consequences (criminal or otherwise) in respect of -
  - (i) any failure to co-operate with the Commission or any other person performing or attempting to

perform functions referred to in the Ordinance,

(ii) any other offence created by, or default, contravention or non-fulfilment referred to in, the Ordinance, and

(g) repeal, replace, amend, extend, adapt, modify or disapply any enactment or rule of customary or common law relating to the management, control and ownership of any person or entity or its business, property, affairs, assets and liabilities; and in this paragraph “**enactment**” means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

## PART VIII

### THE DECISION-MAKING PROCESS AND APPEALS

#### *Representations and notice of decisions, etc*

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

**103.** (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 106, other than a decision -

(a) to serve a notice under section 7(1), (2), (3) or (5), 9(1) or 51(1), (2), (3) or (6), or

(b) to publish a statement under section 41 that a person or entity is the subject of -

(i) proceedings, other enforcement action or sanction,  
or

(ii) investigation,

the procedure prescribed in this section shall be followed.

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

(a) stating that the Commission is proposing to make the decision,

(b) stating the terms of and the grounds for the proposed decision,

(c) setting out particulars of or accompanied by -

(i) any order, prohibition, restriction, condition, obligation, enforcement requirement, other 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 105(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 105(2)), and

(f) giving particulars of the right of appeal which would be exercisable under section 106 if the Commission were to make the proposed decision.

(3) Where -

(a) a ground for the proposed decision is that any applicable

minimum criterion for licensing is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) any proposed order, prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement requires the removal or replacement of any person as -

(i) an officer, employee, auditor or actuary, or holder of a supervised role, or

(ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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 106 if the Commission were to make the proposed decision.

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

(5) The Commission may also, in performing its functions under the



provisions of this Law, the Financial Services Commission Law or the supervisory 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.

(7) For the avoidance of doubt, and in respect of decisions under section 38 or 39 -

- (a) a notice about a proposal to publish a statement must set out the terms of the statement, and
- (b) a notice about a proposal to impose a financial penalty must state the amount of the penalty.

**Notice of decisions of Commission.**

**104.** (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 106, 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, prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall, for the avoidance of doubt -
  - (i) in the case of a decision to publish a statement under section 38, set out the terms of the statement, and
  - (ii) in the case of a decision to impose a financial penalty under section 39, state the amount of the penalty,

- (e) shall contain or be accompanied by, in accordance with the provisions of section 105(1), a statement of the reasons for the decision (but subject to the provisions of section 105(2)), and
- (f) shall give particulars of the right of appeal conferred by section 106;

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 applicable minimum criterion for licensing is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) an order, prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement requires the removal or replacement of any person as -
  - (i) an officer, employee, auditor or actuary, or holder

of a supervised role, or

- (ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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 106.

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

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

- (a) under section 104(1) or (2) of a decision in respect of which a right of appeal is conferred by section 106, or
- (b) under section 103(2) or (3) stating that the Commission is proposing to make such a decision,

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

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

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

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 106.

### *Appeals*

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

106. (1) A person ("A") aggrieved by a decision of the Commission -
- (a) to vary, suspend or revoke A's licence,
  - (b) to suspend or revoke the authorisation or registration of a collective investment scheme,
  - (c) to impose, vary or rescind any enforcement requirement in

respect of A's licence or (as the case may be) in respect of A or A's business,

- (d) to serve a notice on A under section 7(1), (2), (3) or (5), 8(1) or (3) or 9(1),
- (e) to serve a notice of objection on A under section 25,
- (f) to revoke or suspend the authorisation or registration of a collective investment scheme under section 30,
- (g) to impose a licence on A pursuant to section 31(1),
- (h) to disapply a non-discretionary exemption pursuant to section 32,
- (i) to make, renew or vary a prohibition order under section 33 prohibiting the performance of any function, any specified function or any specified class or description of function,
- (j) to refuse to vary or revoke a prohibition order under section 33(5),
- (k) to issue a private reprimand under section 36,
- (l) to publish a statement relating to A under section 38,

- (m) to impose a financial penalty on A under section 39,
- (n) to publish A's name under section 39(7) as a person on whom such a penalty has been imposed,
- (o) to publish a statement under section 41 that A is the subject of -
  - (i) proceedings, other enforcement action or sanction, or
  - (ii) investigation,
- (p) to make, renew or vary an auditors disqualification order against A under section 42,
- (q) to refuse to vary or revoke an auditors disqualification order made against A under section 42,
- (r) to make, renew or vary an actuaries disqualification order against A under section 44,
- (s) to refuse to vary or revoke an actuaries disqualification order made against A under section 44,

- (t) to refuse A's application for permission under section 50(1), or to vary or revoke any such permission, or to impose, vary or rescind any condition in respect of any such permission,
- (u) to serve a notice of objection on A under section 51(1), (2), (3) or (6) objecting to a name,
- (v) to omit, pursuant to the provisions of section 105(2), any matter from a statement of reasons given to A,
- (w) for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64,
- (x) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any applicable minimum criterion for licensing is not or has 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 -

- (i) an officer, employee, auditor or actuary, or holder of a supervised role, or
- (ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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<sup>t</sup>.

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<sup>t</sup> O.R.C. No. IV of 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 of the Commission described in -

- (a) subsection (1)(c) to impose, vary or rescind any enforcement requirement,
- (b) subsection (1)(g) to impose a licence pursuant to section 31(1),
- (c) subsection (1)(p) to make, renew or vary an auditors disqualification order under section 42,
- (d) subsection (1)(q) to refuse to vary or revoke an auditors disqualification order under section 42,
- (e) subsection (1)(l) to publish a statement under section 38,

- (f) subsection (1)(m) to impose a financial penalty under section 39,
- (g) subsection (1)(n) to publish a person's name under section 39(7) as a person on whom such a penalty has been imposed,
- (h) subsection (1)(k) to issue a private reprimand under section 36,
- (i) subsection (1)(o) to publish a statement under section 41 that a person or entity is the subject of -
  - (i) proceedings, other enforcement action or sanction, or
  - (ii) investigation,
- (j) subsection (1)(p) to make, renew or vary an auditors disqualification order under section 42,
- (k) subsection (1)(q) to refuse to vary or revoke an auditors disqualification order under section 42,
- (l) subsection (1)(r) to make, renew or vary an actuaries disqualification order under section 44,

- (m) subsection (1)(s) to refuse to vary or revoke an actuaries disqualification order under section 44,

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 103(6).

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(v) to omit, pursuant to the provisions of section 105(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.

(9) From the date of the commencement of this Law, and in consequence of the repeal by this Law of section 11H(7) of the Financial Services Commission Law, the presumption that an appeal against a decision to publish a statement in respect of a person under section 11C or 11D(3) of that Law (which are re-enacted with modifications by sections 38 and 39(7) of this Law) shall be held in private is abolished.

(10) Where an appeal against a decision to publish -

(a) a statement relating to a person under section 38, or

(b) a person's name under section 39(7),

is upheld, the Commission shall, if the appellant so requests, publish a statement of that fact.

This subsection applies where by virtue of section 103(6) the appellant did not have an opportunity to make representations before the decision was made.

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

107. (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>u</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Restriction on successive challenges.**

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

**108.** (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 106 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 106 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) an auditors or actuaries disqualification order,
  - (b) a prohibition order,
  - (c) a decision to impose an enforcement requirement,
  - (d) a decision to make a public statement, and
  - (e) an order or other decision of a class or description specified by regulations of the Policy and Resources Committee.

## PART IX

### CRIMINAL PROCEEDINGS

#### **Offences as to false or misleading information, and withholding information, etc.**



109. (1) If a person (“A”) -
- (a) in connection with an application for, or for the purposes of obtaining -
    - (i) a licence or the renewal of a licence under the provisions of the supervisory Laws, or
    - (ii) a declaration or the renewal of a declaration under section 8 of the Protection of Investors Law that a collective investment scheme is an authorised or registered collective investment scheme within the meaning of that Law,
  - (b) in purported compliance with a requirement imposed by or under the provisions of, or otherwise for the purposes of, this Law, the Financial Services Commission Law or the supervisory Laws,
  - (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which A intends, or could reasonably be expected to know, that the statement, information or document provided by A would or might be used by the Commission or any other person for the purpose of performing functions under the provisions of, or otherwise for the purposes of, this Law, the Financial Services

Commission Law or the supervisory Laws, or

- (d) in purported compliance with a requirement of an auditor appointed under section 34 of the Insurance Business Law or section 21 of the Insurance Managers and Intermediaries Law or a person appointed as a skilled person pursuant to the provisions of the supervisory Laws or to make a report under section 7(1)(b) or 8 of this Law, section 3(3)(a) of the Protection of Investors Law, section 5(5)(a) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law,

does any of the following -

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

document which A knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) dishonestly or otherwise, A recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

A is guilty of an offence.

(2) If any of the following persons -

- (a) a licensee or former licensee,
- (b) any holder or former holder of a supervised role in respect of, or officer or employee or former officer or employee of, a licensee or former licensee, or
- (c) any holder or former holder of a supervised role in respect of, or officer or employee or former officer or employee of, or designated or former designated administrator or designated or former designated trustee or custodian of, an authorised or registered collective investment scheme or former authorised or registered collective investment

scheme,

fails to provide the Commission with any information in that person's possession knowing or having reasonable cause to believe -

- (i) that the information is relevant to the performance by the Commission of its functions, whether in relation to the licensee or former licensee or authorised or registered collective investment scheme or former authorised or registered collective investment scheme or otherwise, and
- (ii) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the performance of its functions, whether in relation to the licensee or former licensee or authorised or registered collective investment scheme or former authorised or registered collective investment scheme or otherwise,

that person is guilty of an offence.

(3) A person ("**B**") who -

- (a) by any statement, promise or forecast which B knows or has

reasonable cause to believe to be false, deceptive, misleading or inaccurate in a material particular,

- (b) by any dishonest concealment of material facts, whether in connection with a statement, promise or forecast made by B or otherwise, or
- (c) by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is false, deceptive, misleading or inaccurate in a material particular,

induces or is reckless as to whether it may induce another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

- (i) to become or offer to become a customer of B or any other person, or to use services provided by B or any other person, in the course of B or that other person carrying on or offering to carry on any regulated business,
- (ii) to enter or offer to enter into, or refrain from entering or offering to enter into, any contract with B or any other person, being a contract which constitutes or would constitute the carrying on by B or that other person of any regulated business

(including, without limitation, a contract of insurance within the meaning of the Insurance Business Law), or

- (iii) to make or offer to make, or refrain from making or offering to make, a deposit with B or any other person or to enter or offer to enter into, or refrain from entering or offering to enter into, an agreement with B or any other person for the purpose of making such a deposit (and for the purposes of this section "**deposit**" includes any sum that would otherwise be excluded by section 2(3) of the Banking Supervision Law),

is guilty of an offence.

- (4) Subsection (3) does not apply unless -

- (a) the statement, promise or forecast is made, or the facts are concealed, in or from the Bailiwick or arrangements are made in or from the Bailiwick for the statement, promise or forecast to be made or the facts to be concealed,
- (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick, or

(c) the contract or agreement is or would be entered into, or the deposit is or would be made, in the Bailiwick.

(5) The States may by Ordinance amend the provisions of this section.

**Misleading statements and practices - controlled investments.**

**110.** (1) This subsection applies to a person who -

- (a) makes a statement, promise or forecast which that person knows or has reasonable cause to believe to be false, deceptive, misleading or inaccurate in a material particular,
- (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by that person or otherwise, or
- (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is false, deceptive, misleading or inaccurate in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if that person makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

- (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, with that person or any other person, a controlled investment agreement within the meaning of the Protection of Investors Law, or
- (b) to exercise, or refrain from exercising, any rights conferred by a controlled investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any controlled investments is guilty of an offence if that person does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those controlled investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those controlled investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it is a defence for that person to show (for the avoidance of doubt, on a balance of probabilities) that the statement, promise or forecast was made in conformity with -

- (a) price stabilising rules made by the Commission under this section, or
- (b) guidance issued by the Commission on the management of conflicts of interests.



(5) In proceedings brought against a person (“A”) for an offence under subsection (3), it is a defence for A to show (for the avoidance of doubt, on a balance of probabilities) -

(a) that A reasonably believed that A’s act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection,

(b) that A acted or engaged in the conduct -

(i) for the purpose of stabilising the price of controlled investments, and

(ii) in conformity with -

(A) price stabilising rules made by the Commission under this section, or

(B) such provisions corresponding to price stabilising rules, made by a body or authority outside the Bailiwick, as may be applicable to the relevant market, taking into account the circumstances of the act or the course of conduct, or

(c) that A acted or engaged in the conduct in conformity with

guidance issued by the Commission on the management of conflicts of interests.

(6) Subsections (1) and (2) do not apply unless -

- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Bailiwick or arrangements are made in or from the Bailiwick for the statement, promise or forecast to be made or the facts to be concealed,
- (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick, or
- (c) the agreement is or would be entered into, or the rights are or would be exercised, in the Bailiwick.

(7) Subsection (3) does not apply unless -

- (a) the act is done, or the course of conduct is engaged in, in the Bailiwick, or
- (b) the false or misleading impression is created there.

(8) In this Law "**price stabilising rules**" means rules made by the Commission under this section as to -

- (a) the circumstances and manner in which,
- (b) the conditions subject to which, and
- (c) the time when and the period during which,

action may be taken for the purpose of stabilising the price of controlled investments of specified categories, classes or descriptions; and such rules may -

- (i) make such provision as is described in this section and section 56(8), and
- (ii) without prejudice to the provisions of section 121, make different provision in relation to different categories, classes or descriptions of controlled investments.

- (9) The States may by Ordinance amend the provisions of this section.

**Fraudulent intent and concealment of documents, etc.**

111. (1) A person who is knowingly party to the carrying on of regulated business with any fraudulent intent or for any fraudulent purpose is guilty of an offence.

(2) A person who, with intent to avoid detection of the commission of an offence under the provisions of this Law, the Financial Services Commission Law or

the supervisory Laws, removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, any documents or information is guilty of an offence.

**Penalties.**

**112.** (1) A person guilty of an offence under section 26, 53(2), 55(4)(a), 85(3) or 109(2) is liable -

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

(2) A person guilty of an offence under section 61(1), 67(11), 110 or 111(1) or (2) is liable -

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

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

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

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

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

**Criminal proceedings against unincorporated bodies.**

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

- (a) in the case of -

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

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

- (i) a partnership, any partner, general representative or authorised insurance representative thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality, any general partner, general representative or authorised insurance representative thereof,
- (b) in the case of any other unincorporated body, any director, general representative or authorised insurance 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),

the person referred to in the appropriate paragraph above as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

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

name of any of its members.

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

**Criminal liability of directors, etc.**

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

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

paragraph (a), (b), (c) or (d),

the person referred to in the appropriate paragraph above 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.

**Defence of due diligence.**

**115.** 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.

**Jurisdiction.**

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

PART X

PROTECTED DISCLOSURES (WHISTLEBLOWING)



**Power to enact Ordinances.**

117. (1) The States may by Ordinance make such provision as they think fit in respect of the protection of, and the conferring of any right (including, without limitation, the right not to be subjected to detriment or to be unfairly dismissed), remedy, status or capacity on, employees and other individuals of such class or description as may be specified by or under the Ordinance who make disclosures of information in the public interest or for such other reason or purpose as may be so specified ("**protected disclosures**") and to allow such individuals to bring action in respect of victimisation, detriment and other infringements of rights and for connected purposes.

(2) An Ordinance under subsection (1) may, without limitation -

(a) make provision, subject to such exceptions, adaptations and modifications as the States think fit, corresponding to that which is made by or which may be made under the provisions of -

(i) the Public Interest Disclosure Act 1998<sup>x</sup>, and

(ii) the Employment Protection (Guernsey) Law, 1998 ("**the Employment Protection Law**"),

(b) amend the Employment Protection Law and/or make provision in respect of the application of the provisions of

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<sup>x</sup> An Act of Parliament (1998 c. 23).

that Law to protected disclosures and those making them and their employers subject to such exceptions, adaptations and modifications as may be specified in the Ordinance,

- (c) make provision in respect of -
  - (i) the persons or classes or descriptions of persons by and to whom protected disclosures may be made,
  - (ii) the reasons and purposes for which protected disclosures may be made,
  - (iii) the class and description of disclosures which are to qualify as protected disclosures,
  - (iv) the terms and conditions subject to which, and the circumstances in which, disclosures may so qualify,
  - (v) the making of reports on disclosures of information and the form, content and publication of such reports,
- (d) make provision for the prohibition, variation and avoidance of contractual duties of confidentiality (including provisions in agreements which purport to preclude individuals from making protected disclosures

and agreements to refrain from instituting or continuing proceedings, whether under the Employment Protection Law or otherwise, or for breach of contract),

(e) subject to the provisions of section 121(7), make provision as to the duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (criminal or otherwise) in respect of -

(i) any failure to co-operate with any person or entity performing or attempting to perform functions under or referred to in the Ordinance,

(ii) any other offence created by, or default, contravention or non-fulfilment referred to in, the Ordinance, and

(f) empower the Policy and Resources Committee (or such other committee as may be specified by the Ordinance) to make regulations for the purposes of carrying the Ordinance into effect.

(3) Subject to section 118, the provisions of this section and any Ordinance under it apply to Guernsey, Herm and Jethou.

(4) The provisions of this section are without prejudice to any other

provision of this Law or of any other enactment conferring power to enact Ordinances (and vice versa).

**Application to Alderney and Sark.**

118. The States of Alderney and the Chief Pleas of Sark may respectively by Ordinance provide that the provisions of section 117 or any Ordinance of the States of Deliberation thereunder shall extend to Alderney or (as the case may be) to Sark subject to such exceptions, adaptations and modifications as may be prescribed in the Ordinance.

PART XI  
GENERAL PROVISIONS

*Making of rules, codes and guidance*

**Power to make rules for purposes of Law and as to enforcement practice and procedure.**

119. (1) The Commission may make rules for the purposes of this Law -
- (a) making provision in respect of -
    - (i) the detection, investigation and sanctioning (civil and administrative) of contraventions of the provisions of this Law, the Financial Services Commission Law, the supervisory Laws and any other enactment conferring functions upon the Commission by licensees and other persons or classes or descriptions of persons specified in the

rules, and

- (ii) the performance of functions and the imposition of sanctions under the provisions of this Law,
- (b) setting out general conditions or requirements applicable to licensees and other persons or classes or descriptions of persons specified in the rules,
- (c) making provision for matters in respect of the imposition of enforcement requirements under section 23 or licences under section 31,
- (d) prohibiting licensees and other persons or classes or descriptions of persons specified in the rules from carrying on, or holding themselves out as carrying on, regulated 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,

- (e) requiring 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 persons or classes or descriptions of persons specified in the rules,
- (f) making provision as to the settlement of disputes,
- (g) requiring the public disclosure by licensees and other persons or classes or descriptions of persons specified in the rules of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, including, without limitation -
  - (i) information on financial position and financial performance,
  - (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,
- (h) imposing on licensees and other persons or classes or descriptions of persons specified in the rules obligations to ensure compliance by them, their officers, employees and agents, the holders of supervised roles in respect of them and other persons of a class or description specified in the rules with rules and codes and any other provision of this Law,
- (i) making provision otherwise as to the licensing, authorisation, registration, resources and duties of licensees and other persons or classes or descriptions of persons specified in the rules, and
- (j) regulating and prescribing or otherwise in respect of -
  - (i) the practice and procedure (including the method of pleading) to be followed in or in connection with its decision-making process and proceedings,
  - (ii) the means by which particular facts may be proved,

the standard and burden of proof and the manner and way in which representations or evidence may be made or given in or in connection with such process and proceedings,

(iii) the administration of such process and proceedings and of the Commission in respect thereof,

(iv) ancillary, incidental, supplementary and related matters.

(2) Rules under subsection (1)(j) may, without limitation -

(a) regulate procedure in connection with matters preparatory to and subsequent to the consideration of representations and the making of decisions (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of the decision-making process and proceedings, and

(b) make provision as to the representation, and joining, of parties.

**Power to issue codes of practice and guidance.**

120. (1) The Commission, after consultation with -



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

may (without prejudice to any other power conferred by the provisions of this Law or the supervisory 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 customer protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by persons carrying on regulated business or any other persons to whom the code or guidance applies,
- (ii) generally for the purpose of providing clarification or guidance in respect of the provisions of or for the purposes of, or in connection with the

administration, implementation or enforcement of,  
this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules may be made under section 119.

(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 is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted

to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

*Ordinances, regulations and rules, etc*

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

**121.** (1) The States may by Ordinance -

- (a) amend Part I, and sections 6 to 18, 23, 24, 28 to 32, 66 and 103 to 112, where it appears to the States to be necessary or expedient to do so for the purpose of -
  - (i) enabling the Commission more effectively to perform any of its functions,
  - (ii) protecting or enhancing the reputation as a finance centre or economic interests of the Bailiwick,
  - (iii) improving or enhancing the investigation, prevention or detection of crime,
  - (iv) facilitating the instigation of, or otherwise for the purposes of, any criminal, civil, administrative or regulatory proceedings,

- (v) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
  - (vi) discharging any international obligation to which the Bailiwick is subject, or
  - (vii) assisting, in the interests of the public or otherwise, any relevant supervisory authority, and
- (b) make such provision as they think fit -
- (i) for the purpose of carrying the provisions of this Law into effect, and
  - (ii) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

(2) The States may by Ordinance provide that any of the provisions of this Law which are expressed to apply to licensees or authorised or registered collective investment schemes or to any other class or description of person or entity (or to their respective officers, employees or designated administrators or designated trustees or custodians or the holders of supervised roles in respect of them) shall apply also, subject to such exceptions, adaptations and modifications as the States think fit, to -

(a) any other person or entity which carries on regulated business or the business of a collective investment scheme, including a person or entity carrying on any class or description of such business -

(i) which is exempted by the provisions of the supervisory Laws from the requirement to be licensed, authorised or registered thereunder, or

(ii) otherwise in such circumstances specified in the provisions of those Laws as not to require licensing, authorisation or registration thereunder,

in respect of that class or description of business,

(b) any business which is a financial services business within the meaning of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>y</sup>, or

(c) any other person or entity of a class or description specified in the Ordinance (including, for the avoidance of doubt and without limitation, a licensee or authorised or registered collective investment scheme),

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<sup>y</sup> Order in Council No. XV of 2008.

or, as the case may be, to their officers, employees or designated administrators or designated trustees or custodians or the holders of supervised roles in respect of them.

(3) The States may by Ordinance repeal, replace, amend, extend, adapt, modify or disapply any enactment or rule of customary or common law relating to the winding up or other dissolution of a Bailiwick body in its application to any such body which carries on regulated business or the business of a collective investment scheme (including a body to which subsection (2)(a) or (b) applies) or which applies for or is the subject of an application for -

- (a) a licence under the provisions of the supervisory Laws, or
- (b) an authorisation or registration of a collective investment scheme under section 8 of the Protection of Investors Law,

and such an Ordinance may, without limitation -

- (i) empower the Commission to apply for the winding up, or to take steps in relation to the dissolution, of a Bailiwick body,
- (ii) restrict or add to the descriptions of persons who may so apply or take such steps,
- (iii) make special provision as to the grounds upon which, and the manner in which, a Bailiwick body

may be wound up or dissolved, and for the application of the assets of such a body (including the priorities and preferences to be accorded in the distribution of those assets and provision as to rights of set-off and secured interests (including security interests within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof),

- (iv) permit the continuation of any description of the business of a Bailiwick body with a view to its transfer as a going concern to another body, and empower the appropriate court to give directions and orders, including an order to reduce the amount of the contracts of the body in place of ordering it to be wound up or dissolved, and
- (v) make provision as to the personal liability or responsibility of any person who is disclosed in the course of the dissolution or winding up of a Bailiwick body to have been a party to the conduct of the business of that body with any fraudulent intent or for any fraudulent purpose.

(4) The States may by Ordinance empower -

- (a) the Commission or the Policy and Resources 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 (6)(b)) provision amending this Law.

(5) 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).

(6) 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 or regulation -

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (7)),

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

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

(7) The power conferred by subsection (6)(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.

(8) 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.

(9) The Policy and Resources Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 142), consult -

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

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

(10) An Ordinance made under the provisions of this Law (other than

an Ordinance under section 142) ceases to have effect –

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

(11) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of subsection (10), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(12) In this section -

- (a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and

- (b) “**enactment**” means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(13) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

**122.** Regulations made under the provisions of this Law -

- (a) where made by the Commission, shall be made after consultation with the Policy and Resources 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 Policy and Resources 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 Policy and Resources Committee or any other committee of the States

of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

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

123. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions, and
- (b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions, 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 129, or

(b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

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

124. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

(a) in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and

(b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other

enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render 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.

**Regulations and rules are statutory instruments.**

125. For the avoidance of doubt, regulations and rules under the provisions of this Law, the Financial Services Commission Law and the supervisory Laws are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>z</sup>, the provisions of which shall apply accordingly.

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

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



126. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensee or an applicant for a licence, by notice in writing served on a licensee or applicant adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular regulated 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 licensee or applicant having regard to the benefit which compliance would confer on customers, and
- (b) the exercise of those powers will not result in any undue risk to customers.

(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).

*Liability of States, Commission, etc*

**Exclusion of liability.**

127. (1) No liability is incurred -

- (a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (b) by the Commission,
- (c) by Her Majesty's Greffier, Her Majesty's Sheriff, the Registrar of Companies, the Registrar of Foundations, the Registrar of Limited Liability Partnerships, the Alderney Greffier or the Prévôt of Sark, or
- (d) by any member, officer or servant of any of the aforesaid,

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

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>aa</sup>.

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

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

*Miscellaneous*

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

128. (1) In performing its functions under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws -

- (a) the Commission must (so far as relevant) -
  - (i) take into account any written guidance of a general character given by the Policy and Resources 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 Policy and Resources 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 regulated business and regulation issued by a body recognised by the Commission and identified in a code issued under the provisions of this Law or the supervisory Laws,

- (ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws,
- (iii) any matter to which it may have regard under the provisions of this Law, the Financial Services Commission Law or the applicable supervisory 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 or for the purposes of the provisions of this Law, the Financial Services Commission Law or the supervisory Laws in respect of any licensee, authorised or registered collective investment scheme, 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, the Financial Services Commission Law, the supervisory Laws 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.

**Fees, interest and penalties, and recovery thereof.**

**129.** (1) The Policy and Resources 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 Policy and Resources Committee may by regulation prescribe for the purposes of this Law.

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

- (a) the imposition of a licence under section 31,
- (b) an application under section 50(1) for permission for the purposes of the provisions mentioned in that section, and
- (c) the provision of a copy of regulations or other documents described in section 123(1).

(3) The Commission may by regulation make such provision as it 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, the Financial Services Commission Law or the supervisory Laws.

(4) Regulations of the Policy and Resources Committee or (as the case may require) of the Commission 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 prescribed scale or other prescribed factors, or
    - (ii) on such other basis as may be 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, at 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 licensee by or in respect of whom, or in respect of whose licence or business, the fee or interest is payable,
- (iii) the collective investment scheme in respect of which, or in respect of the authorisation or registration of which, the fee or interest is payable or, if the scheme is not a legal or natural person, the designated administrator thereof, or
- (iv) 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 or the relevant supervisory 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 121(8), regulations under this section may make different provision in respect of -

- (a) different categories, classifications, classes or descriptions of licence or licensee or different classes or descriptions of regulated business, or
- (b) the same categories, classifications, classes or descriptions of licence or licensee or the same class or description of regulated 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 Financial Services Commission Law or the supervisory Laws in respect of the payment of fees, interest and penalties.

**Service of notices and documents.**

130. (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 Policy and Resources 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 131, 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 licensee within the meaning of the Insurance Business Law, 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,

- (h) a licensee within the meaning of the Insurance Managers and Intermediaries Law, by being given to or served on the licensee in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, the licensee's address for service under section 14 of that Law,
- (i) a licensee, or an applicant for a licence, within the meaning of the Protection of Investors Law, or a person to whom section 44(1)(c) or (d) of that Law applies, by being given to or served on the licensee, applicant or person in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, the address in the Bailiwick of the licensee, applicant or person furnished pursuant to section 3(1)(e) of that Law,

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, telecommunications address and other electronic or internet communications service

or messaging 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, the Financial Services Commission Law or a supervisory 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, the Financial Services Commission Law or a supervisory 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 Policy and Resources 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, the Financial Services Commission Law or a supervisory 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, the Financial Services Commission Law or a supervisory 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 court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the "**appropriate Court**" means -

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

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law, the Financial Services Commission Law or a supervisory 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, the Financial Services Commission Law or a supervisory Law to have been -

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

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

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

131. (1) Where a document is required or permitted to be submitted to the Commission 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 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>bb</sup>, the Electronic

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

Transactions (Alderney) Law, 2001<sup>cc</sup> and the Electronic Transactions (Sark) Law, 2001<sup>dd</sup>.

**Verification of information.**

132. (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.

**Evidence.**

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

- (a) that a particular person is or is not a licensee or former licensee or was or was not a licensee or former licensee at a particular time,
- (b) that a particular collective investment scheme is or is not an authorised or registered collective investment scheme or

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

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

was or was not an authorised or registered collective investment scheme at a particular time,

- (c) the date on which a particular person obtained or ceased to hold a licence,
- (d) the date on which a particular collective investment scheme became or ceased to be an authorised or registered collective investment scheme,
- (e) the terms of any conditions imposed in respect of a particular licence, authorisation or registration,

is admissible in evidence.

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

**Provision as to publication of notices in Alderney and Sark and on Commission's website.**

**134.** (1) If, pursuant to any requirement imposed by or under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws, any information or document is published in La Gazette Officielle -

- (a) a copy of the information or document shall be published in the Alderney Official Gazette, and

(b) a copy of the information or document shall be furnished to the Policy and Finance Committee of the Chief Pleas of Sark which shall immediately cause a copy of the information or document -

(i) to be inserted in the Sark notice boxes, or

(ii) to be published in the Sark Gazette Officielle published on the website of the Sark Gazette Officielle or in such other manner as the Chief Pleas may by Ordinance determine in respect of the publication of such information or documents.

(2) Any requirement imposed on the Commission by or under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws to publish any information or document in La Gazette Officielle includes a requirement to publish the information or document on the Commission's official website.

**Power to rectify publications.**

135. If at any time it appears to the Commission that a statement published under the provisions of this Law, the Financial Services Commission Law or the supervisory Laws or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Commission shall make such addition, erasure or other alteration to the statement or content thereof as the

Commission considers necessary.

**Exercise of powers is without prejudice to other provisions.**

136. For the avoidance of doubt, any provision of this Law –

- (a) relating to the publication of information in respect of any person or entity, or
- (b) conferring a power on the Commission,

is in addition to and not in derogation from any other provision of this Law, the Financial Services Commission Law, the supervisory Laws or any other enactment or any rule of customary or common law relating to the publication of information or, as the case may be, conferring powers on the Commission.

**General interpretation.**

137. (1) In this Law, unless the contrary intention appears, the words and expressions listed in Schedule 1 have the meaning given by, and shall be construed in accordance with the provisions of, that Schedule (and related words and expressions shall be construed accordingly).

(2) Unless the contrary intention appears, references in the provisions of this Law to -

- (a) the Policy and Finance Committee of the States of Alderney,
- and

- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) The States may by Ordinance amend Schedule 1 by adding any definition to it or by removing or varying any definition set out in it.

(5) Subsection (4) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

**Construction of references to the production of information.**

138. (1) Any power conferred by or under the provisions of this Law to require the production of information in respect of any matter, however expressed, includes a power to require the person from whom the information may be required to answer questions, give explanations and/or to attend an interview in respect of that matter or any aspect thereof, and any reference in the provisions of this Law to such a power shall be construed accordingly.

(2) Any duty imposed by or under the provisions of this Law to produce information in respect of any matter, however expressed, includes a duty to answer questions, give explanations and/or to attend an interview in respect of that matter or any aspect thereof, and any reference in the provisions of this Law to such or duty shall be construed accordingly.

(3) This section is in addition to and not in derogation from any power or duty conferred or imposed by any other provision of this Law or any other enactment.

**Repeals and amendments.**

139. (1) The enactments specified in column 2 of Part I of Schedule 2 are repealed to the extent specified in column 3 thereof.

(2) The enactments specified in column 2 of Part II of Schedule 2 have effect subject to the amendments specified in column 3 thereof.

**Savings and transitional provisions.**

140. (1) Any Ordinance or subordinate legislation made or other thing done under the provisions of the repealed regulatory legislation, or having effect as if so made or done, which could have been made or done under the provisions of this Law or the supervisory Laws shall have effect, after the commencement of this Law, as if made or done under the provisions of this Law or the supervisory Laws (as the case may be).

(2) Subsection (1) applies to any subordinate legislation made under a provision of the repealed regulatory legislation notwithstanding that the corresponding provision of this Law or the supervisory Laws 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.

(3) Anything in the process of being done on the commencement of this Law under a provision of the repealed regulatory legislation which could be done under the provisions of this Law or the supervisory Laws may be continued to be done after the commencement of this Law under the provisions of this Law or the supervisory Laws (as the case may be).

(4) Any reference in any enactment, however expressed, to any of the provisions of the repealed regulatory legislation which are re-enacted (with or without modification) by the provisions of this Law or the supervisory Laws shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the provisions as re-enacted.

(5) The Policy and Resources Committee may make regulations containing such savings and transitional provision as it thinks fit -

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of the repealed regulatory legislation which are re-enacted (with or without modification) by the provisions of this Law to the corresponding provisions of this Law.



(6) Regulations under subsection (5) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Policy and Resources Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(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.

**Citation.**

141. This Law may be cited as the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

142. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

## SCHEDULE 1

Section 137(1)

### GLOSSARY OF EXPRESSIONS

In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) -

**"accountable person"** : see section 23(2),

**"action"** includes inaction and failure to act,

**"actuaries disqualification order"** : see section 44(1),

**"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 Policy and Resources 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 a licensee or an authorised or registered collective investment scheme, or

(c) any other person who performs or has performed the functions of an actuary of a licensee within the meaning of section 42(6),

**"additional controller holding"** : see section 26(2),

**"administered person"** : see section 80,

**"administration management order"** : see section 81(1),

**"administration manager"** : see section 81(2),

**"advocate"** means an Advocate of the Royal Court of Guernsey,

**"Alderney company"** means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004<sup>ee</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the

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<sup>ee</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

functions of Registrar under the Companies (Alderney) Law, 1994,

**"ancillary vehicle"** : see section 20(3) of the Protection of Investors Law,

**"appointed Laws"** means -

- (a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (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,

**"appropriate Court"**, in sections 27, 29, 30, 32, 37, 46, 47, 48, 99 and 130 :  
see respectively sections 27(9), 29(7), 30(8), 32(10), 37(11), 46(9), 47(5), 48(3), 99(6),  
and 130(6),

**"approved supervised role"** means a role or position which is an approved supervised role for the purposes of the supervisory Laws,

**"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 party"**, in relation to any person, means -

- (a) any person who is a partner (or fellow member, in the case of a limited liability partnership) of that person,
- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) any body in respect of which that person holds a supervised role,
- (e) where that person is a company -
  - (i) a holding company, subsidiary or related company

of that person,

- (ii) a subsidiary or related company of a holding company of that person,
- (iii) a holding company of a subsidiary of that person, or
- (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

Provided always that the Commission may by regulation amend the definition of "associated party",

**"auditor"** means -

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008 and who is, where required by or under the

provisions of the supervisory Laws, authorised or approved by the Commission to audit the accounts of licensees, or

- (b) any other person who performs or has performed the functions of an auditor of a licensee within the meaning of section 42(6),

**"auditors disqualification order"** : see section 42(1),

**"authorised"**, in relation to a collective investment scheme, means declared in an authorisation issued by the Commission under section 8 of the Protection of Investors Law to be an authorised collective investment scheme for the purposes of that Law,

**"authorised insurance representative"** : see section 2(6) of the Insurance Managers and Intermediaries Law,

**"Bailiff"**, subject to sections 12(4) and 67(12), means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

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

**"Bailiwick body"** means -

- (a) a Guernsey body, being -



- (i) a Guernsey company,
  - (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or
  - (iii) an unincorporated body whose principal place of business is in Guernsey,
- (b) an Alderney body, being -
- (i) an Alderney company, or
  - (ii) an unincorporated body whose principal place of business is in Alderney,
- (c) a Sark body, being any body, other than one mentioned in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

**"banking licence"** : see section 1(1) of the Banking Supervision Law,

**"Banking Supervision Law"** means the Banking Supervision (Bailiwick of

Guernsey) Law, 2020<sup>ff</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>gg</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

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<sup>ff</sup> Approved by the States of Deliberation on the \*\* August, 2020.

<sup>gg</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

Government of Alderney Law, 2004<sup>hh</sup>,

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

**"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,

**"cohabitant"** : see paragraph (b) of the definition of "associate",

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<sup>hh</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); and the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012).

**"collective investment scheme"** means any arrangement identified and described in Category 1 in paragraph 1 of Schedule 1 to the Protection of Investors Law,

**"Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

**"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,

**"Companies Laws"** means the Companies (Alderney) Law, 1994 and the Companies (Guernsey) Law, 2008,

**"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, the Financial Services Commission Law and the supervisory 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,

**"contravention"** includes failure to comply,

**"controlled investment"** means an investment of any of the categories identified and described in Schedule 1 to the Protection of Investors Law,

**"controlled investment business"** : see section 1(3)(a) of the Protection of Investors Law,

**"controller"**, in relation to a body, means -

- (a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>ii</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"customers"** includes investors and clients (within the meaning of the

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

Protection of Investors Law), depositors and investors (within the meaning of the Banking Supervision Law), clients (within the meaning of the Regulation of Fiduciaries Law) and policyholders and clients (within the meaning of the Insurance Business Law and the Insurance Managers and Intermediaries Law) and also includes, in respect of a person carrying on regulated business or an administered person -

(a) who is a trustee of a trust, or

(b) who carries on regulated business in respect of a trust,

beneficiaries of the trust,

**"deposit"** : see section 2 of the Banking Supervision Law,

**"deposit-taking business"** : see section 3 of the Banking Supervision Law,

**"designated administrator"** and **"designated trustee or custodian"**, in relation to an authorised or registered collective investment scheme, means the person designated as such by the Commission for the purposes of the Protection of Investors Law,

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

**"director"**, in relation to a body, includes any person who occupies the

position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

(a) in relation to information stored or recorded otherwise 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 Policy and Resources Committee may by regulation amend the definition of "documents",

**"electronic address"** : see section 130(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 Policy and Resources 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 requirements"** : see section 23(1),

**"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,

**"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,

**"fiduciary licence"** : see section 6 of the Regulation of Fiduciaries Law,

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

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<sup>jj</sup> Ordres en Conseil Vol. XXX, p. 243.

**"former authorised or registered collective investment scheme"** means a collective investment scheme which -

- (a) is not and is not deemed to be an authorised or registered collective investment scheme within the meaning of this Law, but
- (b) has previously been or been deemed to be -
  - (i) such an authorised or registered collective investment scheme, or
  - (ii) an authorised or registered collective investment scheme within the meaning of the repealed regulatory legislation,

and includes any person or entity which is or is deemed to be a former authorised or registered collective investment scheme within the meaning of and for the purposes of the supervisory Laws or any of them,

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

- (a) is not and is not deemed to be a licensee within the meaning of this Law, but

(b) has previously been or been deemed to be -

(i) such a licensee, or

(ii) a licensee, licensed institution or licensed fiduciary within the meaning of the repealed regulatory legislation,

and includes any person who is or is deemed to be a former licensee within the meaning of and for the purposes of the supervisory Laws or any of them,

**"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>kk</sup>, and

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<sup>kk</sup> Order in Council No. I of 2013.

- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

"**functions**" includes duties, powers and privileges,

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

"**general 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>II</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),

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

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

**"group"**, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

**"group entity"** means a body or entity carrying on regulated business and which is not a licensee but which is part of a group containing a licensee,

**"Guernsey company"** means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008,

**"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) Law, 2013<sup>mm</sup>,

**"Guernsey limited partnership"** means a limited partnership which is

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<sup>mm</sup> Order in Council No. VI of 2014.

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,

**"Her Majesty's Sheriff"**, in relation to an order made under section 27 or 46, means -

- (a) the Alderney Greffier, where the order was made by the Court of Alderney,
- (b) the Prévôt, where the order was made by the Court of the Seneschal,
- (c) Her Majesty's Sheriff, where the order was made by the Royal Court,

**"holding company"** : see Schedule 3,

**"incorporated cell"** means an incorporated cell of an incorporated cell company,

**"incorporated cell company"** means a company incorporated as, or converted into, an incorporated cell company in accordance with the provisions of the Companies (Guernsey) Law, 2008,

**"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, 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,

**"inspector"** means a person appointed by the Commission under section 8(1),

**"institution"** : see section 66 of the Banking Supervision Law,

**"insurance"** includes assurance and reinsurance, except in relation to insurance intermediaries, where it does not include reinsurance,



**"insurance business"** : see Schedule 5 to the Insurance Business Law,

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>nn</sup>,

**"insurance intermediary"** : see section 2(5) of the Insurance Managers and Intermediaries Law,

**"insurance manager"** : see section 1(3) of the Insurance Managers and Intermediaries Law,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>oo</sup>,

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

**"interim vesting order"** : see article 2(2) of the Saisie Procedure (Simplification) (Bailiwick of Guernsey) Order, 1952<sup>pp</sup>,

**"international agreement"** means -

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<sup>nn</sup> Order in Council No. XXI of 2002.

<sup>oo</sup> Order in Council No. XXII of 2002.

<sup>pp</sup> Orders of the Royal Court Vol. 1, p. 49; amended by O.R.C. No's. XIV of 1989 and 1 of 1995.

- (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>99</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,

**"investment exchange"** : see section 79(1) of the Protection of Investors Law,

**"investor"** : see section 79(1) of the Protection of Investors Law,

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

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<sup>99</sup> Order in Council No. III of 1994.

**“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>rr</sup>,

**"licence"** means -

- (a) a licence within the meaning of the Protection of Investors Law,
- (b) a banking licence within the meaning of the Banking Supervision Law,
- (c) a fiduciary licence within the meaning of the Regulation of Fiduciaries Law,
- (d) a licence within the meaning of the Insurance Business Law,  
or
- (e) a licence within the meaning of the Insurance Managers and Intermediaries Law,

and **"licensed"** and related expressions shall be construed accordingly (and see sections 31(2) and 42(6)),

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<sup>rr</sup> Ordres en Conseil Vol. XLIII, p. 617.

**"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 the meaning of the Regulation of Fiduciaries Law (that is, a person who holds a fiduciary licence under that Law),

**"licensed insurance intermediary"** means a person who is a licensee within the meaning of the Insurance Managers and Intermediaries Law (being a person who is a licensed insurance intermediary under that Law),

**"licensed insurance manager"** means a person who is a licensee within the meaning of the Insurance Managers and Intermediaries Law (being a person who is a licensed insurance manager under that Law),

**"licensed insurer"** means a person who is a licensee within the meaning of the Insurance Business Law (that is, a person who is a licensed insurer under that Law),

**"licensee"** : see sections 4, 31(2) (in respect of persons on whom a licence is imposed under section 31) and 42(6) (in respect of sections 36 to 45),

**"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>ss</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 -

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

- (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 laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"liquidator"** (except in sections 97 and 98 and in paragraph (e) of the definition of "winding up event") includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

**"long term business"** : see Schedule 5 to the Insurance Business Law,

**"market abuse"** : see sections 56 and 64(10)(b),

**"member"**, in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008<sup>tt</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,

**"members of the Commission"** means the members of the Commission (known as Commissioners) elected by the States under the provisions of paragraph 1 of Schedule 1 to the Financial Services Commission Law and for the time being holding office,

**"minimum criteria for licensing"** means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of -

- (a) Schedule 4 to the Protection of Investors Law,
- (b) Schedule 2 to the Banking Supervision Law,

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

- (c) Schedule 1 to the Regulation of Fiduciaries Law,
- (d) Schedule 7 to the Insurance Business Law,
- (e) Schedule 4 to the Insurance Managers and Intermediaries Law,

and includes the requirements for authorised or registered collective investment schemes specified in Schedule 3 to the Protection of Investors Law,

**"modifications"** includes additions and deletions,

**"name"**, in sections 49 to 55, includes a trading name,

**"notified supervised role"** means a role or position which is a notified supervised role for the purposes of the supervisory Laws,

**"officer"** -

- (a) in relation to a company, includes a director, liquidator, manager and secretary thereof, and
- (b) in relation to an authorised or registered collective investment scheme, or an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme, includes a director, partner,



managing director, chief executive, trustee (in the case of a unit trust), member (in the case of a limited liability partnership) or general partner (in the case of a limited partnership) of that scheme or applicant,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>uu</sup> and -

(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>vv</sup>,

(c) in relation to Sark -

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<sup>uu</sup> Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

<sup>vv</sup> Order in Council No. III of 2005.

- (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,

**"partner"** has the same meaning as in the Partnership (Guernsey) Law, 1995<sup>ww</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

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<sup>ww</sup> Ordres en Conseil Vol. XXXVI, p. 179.

(d) an unincorporated body,

**"personal fiduciary licence"** : see section 4 of the Regulation of Fiduciaries Law,

**"policy"** : see Schedule 5 to the Insurance Business Law,

**"Policy and Finance Committee of the Chief Pleas of Sark"** : see section 137(2),

**"Policy and Finance Committee of the States of Alderney"** : see section 137(2),

**"Policy and Resources Committee"** means the Policy and Resources Committee of the States of Guernsey,

**"policyholder"** : see Schedule 5 to the Insurance Business Law,

**"prescribed Laws"** means -

(a) the supervisory Laws,

(b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007,
- (f) the Registration of Non Regulated Financial Services Businesses Law, 2008,
- (g) the Transfer of Funds (Guernsey) Ordinance, 2017,
- (h) the Transfer of Funds (Alderney) Ordinance, 2017,
- (i) the Transfer of Funds (Sark) Ordinance, 2017,
- (j) the Single Euro Payments Area (Guernsey) Ordinance, 2016,
- (k) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (l) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (m) any other enactment prescribed for the purposes of this

Law by regulations of the Commission,

**"prohibition order"** : see section 33(1),

**"promotion"**, in connection with a controlled investment : see paragraph 1 of Schedule 2 to the Protection of Investors Law as read with the definition of "the public" in section 79(1) of that Law,

**"property"** includes property, rights and powers of every description,

**"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>xx</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

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<sup>xx</sup> Approved by the States of Deliberation on the \*\* August, 2020.

- (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 definitions 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, customers and potential customers (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 or customers of, in or with that body,

the "**purposes of**" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

"**qualifying capital interest**" : see paragraph (a) of the definition of "related company" below,

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

**"registered"**, in relation to a collective investment scheme, means declared in a registration issued by the Commission under section 8 of the Protection of Investors Law to be a registered collective investment scheme for the purposes of that Law,

**"registered collective investment scheme"** means a collective investment scheme declared in a registration issued by the Commission under section 8 of the Protection of Investors Law to be a registered collective investment scheme for the purposes of that Law,

**"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>yy</sup>,

**"regulated business"** : see section 3,

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

**"regulated fiduciary activities"** means regulated activities within the meaning of section 2 of the Regulation of Fiduciaries Law,

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>zz</sup>,

**"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

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<sup>zz</sup> Approved by the States of Deliberation on the \*\* August, 2020.



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 Policy and Resources Committee may by regulation amend the definitions of "related company", "qualifying capital interest" and "relevant shares",

**"relevant electronic address"** : see section 130(1)(iii),

**"relevant officer"** in sections 38 and 39: see section 38(3),

**"relevant person"**, in sections 7 and 8: see section 6(1),

**"relevant supervisory authority"** means -

- (a) an authority performing in the Bailiwick or any other jurisdiction -
  - (i) functions corresponding to any functions of the Commission, or
  - (ii) such other functions as the Policy and Resources 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),

**"repealed regulatory legislation"** means –

- (a) the provisions of the Financial Services Commission Law repealed by this Law (see section 139 and Part I of Schedule 2),
- (b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (d) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (e) the provisions of the Insurance Business Law repealed on the date of commencement of this Law by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2020,
- (f) the provisions of the Insurance Managers and

Intermediaries Law repealed on the date of commencement of this Law by the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2020, and

- (g) the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008 (which is repealed by section 139 of, and Part I of Schedule 2 to, this Law),

as they had effect immediately prior to the date of commencement of this Law,

**"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,

the **"section in question"** : see section 12(1),

**"security"** means any charge, mortgage, hypothèque, lien or other security (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993), and **"secured interest"** shall be construed accordingly,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction

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- (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 may be prescribed by regulations of the Policy and Resources Committee, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

**"Seneschal"**, in relation to Sark, includes the Deputy Seneschal and a Lieutenant Seneschal,

**"servant"** includes a person working under a contract for services and an employee,

**"shareholder controller"** -

- (a) in relation to a body, and subject to the provisions of

paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a body (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"** means a person appointed as a skilled person pursuant to the provisions of the supervisory Laws,

**"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"** has the meaning given in Schedule 3, and **"subsidiary"** has the same meaning,

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

**"supervisory Laws"** : see section 2,

**"transmitted"** : see section 130(1)(iv),

**"trust"** means the legal relationship that exists (by whatever name) where a person (the **"trustee"**) holds or has vested in the trustee or is deemed to hold or have vested in the trustee any property which does not form, or which has ceased to form, part of the trustee's own estate -

- (a) for the benefit of another person, whether or not yet ascertained or in existence, or
- (b) for any purpose which is not for the benefit only of the trustee,

and the expression "**trust**" includes a trust and any equivalent or similar structure or arrangement, whether established in or under the laws of the Bailiwick or elsewhere and howsoever named, but for the avoidance of doubt does not include a foundation,

**"undue risk"** : see section 80,

**"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>aaa</sup>,

**"vetted supervised role"** means a role or position which is a vetted supervised role for the purposes of the supervisory Laws,

**"winding up event"**, in respect of any person, means that -

- (a) a declaration of insolvency has been made in respect of the person by the Royal Court under the Loi ayant rapport aux

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



Débiteurs et à la Renonciation, 1929<sup>bbb</sup>,

- (b) a Commissioner or Committee of Creditors has been appointed by the Royal Court under article 7 of Loi ayant rapport aux Débiteurs et à la Renonciation, 1929 to supervise or secure the estate of the person,
- (c) the affairs of the person have been declared to be in a state of *désastre* at a meeting of the person's arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (d) an interim vesting order has been made against the person in respect of any of the person's real property in the Bailiwick,
- (e) in the case of a company, and otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up -
  - (i) a liquidator (provisional or otherwise) has been appointed to act, or

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

- (ii) the company has passed a special resolution that it be voluntarily wound up,
- (f) in the case of a company, an administration order is in force in respect of the company under Part XXI of the Companies (Guernsey) Law, 2008 or, if the company is a protected cell company, in respect of any of its cells,
- (g) in the case of a protected cell company, a receivership order is in force in respect of any of its cells,
- (h) in the case of a limited partnership, any of the circumstances or events in or upon which the limited partnership must be dissolved pursuant to section 28 of the Limited Partnerships (Guernsey) Law, 1995 has occurred,
- (i) in the case of a limited liability partnership, any of the circumstances or events in or upon which the limited liability partnership must commence to be wound up pursuant to section 85(1) of the Limited Liability Partnerships (Guernsey) Law, 2013 has occurred,
- (j) in the case of a partnership other than a limited partnership or limited liability partnership -

- (i) any of the circumstances or events specified in Part V of the Partnerships (Guernsey) Law, 1995 in or upon which the partnership is dissolved has occurred, or
- (ii) the Royal Court has ordered the dissolution of the partnership under section 34 of that Law,
- (k) in the case of a foundation, a winding up event within the meaning of paragraph 23(1) of Schedule 2 to the Foundations (Guernsey) Law, 2012 has occurred in respect of the foundation,
- (l) in the case of an administered person (or a cell of a protected cell company), an administration management order is in force in relation to the administered person or cell,
- (m) a composition, compromise or arrangement with creditors has been entered into in respect of the person whereby the person's creditors will receive less than 100 pence in the pound,
- (n) possession or control has been taken of, or a receiver has been appointed in respect of, any of the business, property or affairs of the person by or on behalf of creditors or, in

the case of a company, the holders of debentures issued by it, or

- (o) an event, measure or procedure has occurred outside the Bailiwick in relation to the person which corresponds as nearly as may be to any event, measure or procedure described in paragraphs (a) to (n).

## SCHEDULE 2

Section 139

### REPEALS AND AMENDMENTS

#### PART I REPEALS

	ENACTMENT	EXTENT OF REPEAL
1.	The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 <sup>ccc</sup>	<p>(a) Sections 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 21B and 21E.</p> <p>(b) In section 19(1)(c), subparagraphs (i) and (ii).</p> <p>(c) In section 24(1), the definitions of "the Court", "disqualification order", "licensee" and "relevant officer".</p>
2.	The Financial Services Commission	Section 1(4)

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<sup>ccc</sup> Ordres en Conseil Vol. XXX, p. 243; the repealed provisions mentioned at items (a) and (c) in the third column were inserted by the enactments listed at entries 2, 3 and 4.

	(Bailiwick of Guernsey) (Amendment) Law, 2003 <sup>ddd</sup>	
3.	The Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008 <sup>eee</sup>	Sections 2 and 3
4.	The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2016 <sup>fff</sup>	The whole Law.
5.	The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008 <sup>ggg</sup>	The whole Ordinance
6.	The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) (Amendment) Ordinance, 2016 <sup>hhh</sup>	The whole Ordinance

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**ddd** Order in Council No. XXII of 2003.

**eee** Order in Council No. XIX of 2008.

**fff** Order in Council No. XIII of 2016.

**ggg** Ordinance No. LII of 2008.

**hhh** Ordinance No. XXIX of 2016.

PART II  
AMENDMENTS

	ENACTMENT	AMENDMENT
1.	The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 <sup>iii</sup>	In section 19(5) for the expression "paragraphs (i), (ii) and (iii)" substitute "subparagraph (iii)".
2.	The Trusts (Guernsey) Law, 2007 <sup>jjj</sup>	After section 69(2)(f) insert the following paragraph -  "(ff) the Guernsey Financial Services Commission,".
3.	The Companies (Guernsey) Law, 2008 <sup>kkk</sup>	After section 107(2)(c) insert the following paragraph -  "(cc) if the company or (in the case of a protected cell company) any cell thereof has an administration management order in force, the administration manager,".  In section 107(2)(d) repeal the word "is".  After section 110(3)(c), insert the following paragraph -  "(cc) if the company or (in the case of a

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<sup>iii</sup> Ordres en Conseil Vol. XXX, p. 243; section 19(2)(c)(i) was amended by Order in Council No. XIX of 2010.

<sup>jjj</sup> Order in Council No. III of 2008.

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

		<p>protected cell company) any cell thereof has an administration management order in force, the administration manager,".</p> <p>After section 110(4)(c), insert the following paragraph -</p> <p>"(cc) in the case of a company or (if the company is a protected cell company) any cell thereof with an administration management order in force, the administration manager and contributories of the company or the cell, as the case may be,".</p> <p>After section 136(2)(a), insert the following paragraph -</p> <p>"(aa) any exercise of the powers of an administration manager under section 86(7) or (8) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,".</p> <p>After section 370(1)(c), insert the following paragraph -</p> <p>"(cc) any administration manager thereof or (in the case of a protected cell company) of any cell thereof,".</p> <p>In section 370(5)(e) after the word "except" insert ", in each case,".</p> <p>After section 370(5)(e) insert the following paragraph -</p> <p>"and (f) any administration manager of the company or (in the case of a protected</p>
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		<p>cell company) of a cell of the company (except, in either case, where the administration manager is the applicant)".</p> <p>After section 371(1)(d)(ii) insert the following paragraph -</p> <p>"and (iii) any administration manager of the company or (in the case of a protected cell company) of a cell of the company."</p> <p>After section 427(1)(e), insert the following paragraph -</p> <p>"(ee) being an administration manager of any company or any specified company or of a cell of any protected cell company or any specified protected cell company,".</p> <p>After section 427(2)(f), insert the following paragraph -</p> <p>"(ff) any administration manager of such a company as is mentioned in paragraph (e) or of a cell of a protected cell company which is such a company as is so mentioned,".</p> <p>In section 433(1)(b) the words "or administration order" are repealed.</p> <p>After section 433(1)(b) insert the following paragraph -</p> <p>"or (c) the management by an administrator or administration manager of the business, property and affairs of a company or a cell of a protected cell</p>
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		<p>company pursuant to an administration order or (as the case may be) an administration management order,".</p> <p>In section 433(2)(a) for "administrator," substitute "administrator or administration manager".</p> <p>In section 433(2)(b) for "administrator, receiver," substitute "administrator, administration manager or receiver".</p> <p>In section 435(1) -</p> <p>(a) after the words "in the course of the winding up" insert "or management",</p> <p>(b) for the words "or administration order" substitute ", administration order or administration management order", and</p> <p>(c) for "receiver," insert "administration manager or receiver",</p> <p>In section 435(2) -</p> <p>(a) in paragraph (a) after "insolvent liquidation" insert "or insolvent management",</p> <p>(b) in paragraph (b) -</p> <p>(i) after "winding up" insert "or management",</p> <p>(ii) after "insolvent liquidation" insert "or insolvent management".</p>
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		<p>In section 435(3) after "insolvent liquidation" insert "or insolvent management".</p> <p>In section 435(6) -</p> <p>(i) after "insolvent liquidation" insert "or insolvent management",</p> <p>(ii) for the words "or administration order" substitute ", administration order or administration management order".</p> <p>In section 458(4)(b) and (c) for "or administrator" substitute ", administrator or administration manager".</p> <p>In section 459(1)(b) and (4)(b) after "administration order" insert "or administration management order".</p> <p>In section 460(1)(e) and (3)(b) after "administrator" insert "or administration manager".</p> <p>In section 480(1)(c) after "administrator" insert "or administration manager".</p> <p>In section 482(d) after "administration" insert ", administration management".</p> <p>In section 532(1), immediately after the definition of "accounts", insert the following definitions -</p> <p><b>""administration management order"</b> means an administration management order made by the Court under section 81(1) of the Financial Services Business</p>
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		<p>(Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,"</p> <p>""<b>administration manager</b>" means an administration manager appointed by the Court pursuant to section 81(2) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,".</p> <p>In section 532(1), in the definition of "officer", for "receiver and administrator thereof" substitute "receiver, administrator and administration manager of the company and, in the case of a protected cell company, of any cell of the company,".</p>
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## SCHEDULE 3

Section 137 & Schedule 1

### MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if -

(a) that other -

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of a company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

- (a) that a person cannot be appointed thereto without the exercise in that person's favour by that other company of such a power,
- (b) that a person's appointment thereto follows necessarily from that person's appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another -

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to items (c) and (d), any shares held or power exercisable -
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other,

not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded,
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The Policy and Resources Committee may make regulations amending the provisions of this Schedule.

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

**PROJET DE LOI**

Entitled

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

The States are asked to decide:-

Whether they are of the opinion to approve the Projet de Loi entitled "The Banking Supervision (Bailiwick of Guernsey) Law, 2020", as amended in accordance with the Resolution of the States made on the 15<sup>th</sup> July, 2020, and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

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

**EXPLANATORY MEMORANDUM**

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

**Background**

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



Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, amended by Ordinance under the Ordinance-making powers set out in those two Laws.

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

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

At their meeting of 15<sup>th</sup> July, 2020, the States resolved that the version of the Projet submitted for approval at that meeting should be amended to make the text of the Projet gender neutral. In accordance with that Resolution the text has been amended and is re-presented accordingly.

# PROJET DE LOI

ENTITLED

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

ARRANGEMENT OF SECTIONS

### PART I REGULATION OF DEPOSIT-TAKING BUSINESS

#### *Restriction on acceptance of deposits*

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

#### *Licensing*

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

#### *Principles of conduct*

10. Principles of conduct for licensed institutions.

#### *Directions*

11. Power to issue directions.

#### *Supervised roles*

12. Supervised roles.

*Information as to institutions*

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

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

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

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

*Representations, notice of decisions  
and appeals*

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

*Invitations to make deposits*

24. Control of advertising.
25. Unsolicited calls.

*Notification of certain matters*

26. Reports of large exposures.

*Powers to obtain information  
and skilled persons, etc*

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

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

#### *Accounts and auditors*

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

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

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

#### *General requirements for licensed institutions*

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

### PART III DISCLOSURE OF INFORMATION

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

### PART IV COMPENSATION SCHEMES

- 48. Power to establish compensation scheme.

### PART V OFFENCES AND PENALTIES

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

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

## PART VI GENERAL PROVISIONS

### *Miscellaneous*

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

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

- 59. Exclusion of liability.

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

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

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

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

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

# PROJET DE LOI

ENTITLED

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

**THE STATES**, in pursuance of their Resolutions of the 30<sup>th</sup> October, 2015<sup>a</sup> and the 27<sup>th</sup> November, 2015<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### REGULATION OF DEPOSIT-TAKING BUSINESS

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

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

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

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

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

- (2) This section does not apply in relation to –
- (a) a person specified in Schedule 1 (provided that the exemption of a person so specified is subject to any restriction specified in Schedule 1 in relation to that person), or
  - (b) a transaction of a class or description specified for the purposes of this subsection by regulations of the States of Guernsey Policy and Resources Committee (**“the Committee”**).
- (3) The Committee may by regulation amend Schedule 1 –
- (a) by adding any person to it or removing any person from it, or
  - (b) by removing, relaxing or extending any restriction set out in it or by imposing any new restriction.
- (4) Regulations under subsection (2) or (3) may prescribe transactions by reference to any factor appearing to the Committee to be appropriate and, without limitation, by reference to all or any of the following –
- (a) the amount of the deposit in question,
  - (b) the total liability of the person accepting the deposit to depositors or other creditors,

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

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

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

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

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



(7) A person who contravenes any provision of this section is guilty of an offence.

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

**Meaning of "deposit".**

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

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

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

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

- (a) it is paid by way of advance or part payment under a

contract for the sale, hire or other provision of property or services and is repayable only in the event of the property or services not in fact being sold, hired or otherwise provided,

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

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

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

relative of the person receiving it or who is, or is a close relative of, the holder of an approved supervised role or vetted supervised role in respect of that person.

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

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

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

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

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

- (a) the persons carrying on the business do not hold themselves out as accepting deposits on a day to day basis, and
- (b) any deposits which are accepted are accepted only on

particular occasions, whether or not involving the issue of debentures or other securities.

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

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

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

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

**Power to make regulations.**

4. (1) The Committee may make regulations –

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

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

### *Licensing*

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

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

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

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

(a) a statement of –

(i) the nature and scale of the proposed deposit-taking business,

(ii) the applicant's plans for the future development of that business, and

(iii) particulars of the applicant's arrangements for

the management of that business,

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

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

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

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

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

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

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

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

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

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

- (a) the applicant has failed for -

- (i) a period of three months, or

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

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

- (b) the Commission has, whether before or after the

expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

(c) a period of 14 days has expired following the giving of that notice, and

(d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) -

(i) that notice has not been withdrawn by the Commission, and

(ii) the information, statement or other document in question has not been provided.

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

(10) If at any time a licensed institution proposes to carry on a deposit-taking business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (9).



**Grant or refusal of banking licences.**

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

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

(b) refuse the application.

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

(a) in relation to the applicant, and

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

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

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

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

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

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

**Fees regulations and recovery of fees.**

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

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

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

- (a) applications for or in respect of, and the grant, renewal or variation of, banking licences,
- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information

or notification under the provisions of or for the purposes of this Law,

(c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,

(d) any other matters in respect of licensed institutions or banking licences.

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

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

(a) prescribe fees to be payable to the Commission annually or periodically,

(b) specify the dates, times, intervals, occasions, circumstances or events on, at, in or within which the payment of fees or interest is to be made,

(c) provide for the determination or calculation of any fee or interest -

(i) in accordance with or by reference to a scale or other factors prescribed by the regulations, or

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

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

as a civil debt due to the Commission,

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

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

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

(7) The provisions of this section are in addition to and not in derogation from any other provision of this Law or the provisions of the regulatory

Laws in respect of the payment of fees, interest and penalties.

**Conditions of banking licences.**

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

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

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

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

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) impose limitations on the acceptance or repayment of deposits, the granting of credit, the making of investments or the carrying on of business,
- (c) prohibit the institution from soliciting (whether at all or in any specified manner) deposits or business, either generally or from persons who are not already

depositors,

- (d) prohibit the institution from entering into any other transaction or class or description of transactions,
- (e) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the institution,
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution,
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
- (h) specify requirements as to the capitalisation and liquidity of the business of the institution,
- (i) prohibit, restrict or impose limitations on the carrying on of deposit-taking business, or any class or description of deposit-taking business, in or from within any place, or any particular place, outside the Bailiwick –
  - (i) by the institution itself,

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

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

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

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

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



whether or not to grant an application for a banking licence or (as the case may be) to suspend or revoke a banking licence.

**Surrender of banking licences.**

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

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

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

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a banking licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 21, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

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

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

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

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

#### *Principles of conduct*

#### **Principles of conduct for licensed institutions.**

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

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

### *Directions*

#### **Power to issue directions.**

11. (1) The Commission may, at any time, by notice in writing, give such directions to any person referred to in subsection (2) (the "**directed person**"), requiring 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 licensed institution,
- (b) subject to the provisions of subsections (5) and (8), a former licensed institution,
- (c) a person carrying on deposit-taking business -
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing

hereunder,

in respect of such business,

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

(i) a licensed institution, or

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

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

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

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

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

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

may –

- (a) require the directed person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) prohibit or impose limitations on the carrying on of deposit-taking business and other business, the acceptance or repayment of deposits, the granting of credit or the making of investments,
- (c) prohibit, restrict or impose limitations on the carrying on of deposit-taking business, or any class or description of deposit-taking business, in or from within any place, or any particular place, outside the Bailiwick -
  - (i) by the directed person,
  - (ii) by any undertaking established by the directed person (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),

- (d) prohibit the directed person from soliciting (whether at all or in any specified manner) deposits and any other business, either generally or from specified persons or classes or descriptions of persons,
- (e) prohibit the directed person from entering into any other transaction or class or description of transactions,
- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,
- (g) specify requirements to be fulfilled otherwise than by action taken by the directed person,
- (h) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and manner and containing such information and particulars, as may be so specified,
- (i) require the directed person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensed fiduciary, licensed institution or person of such other class or description as may be specified in the direction, assets of such value and description as may be so specified; and any such

direction may provide that -

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

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

for the benefit of third parties notwithstanding any rule of law to the contrary,

(j) where the directed person is a licensed institution, and without prejudice to paragraph (i), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensed fiduciary, licensed institution or person of any other class or description, in each case approved by the Commission, all assets, or all assets of any specified class or description, which -

(i) belong to the directed person, or

(ii) are held by or to the order of the directed person and either belong to depositors, investors or customers or belong to some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by depositors, investors or customers,

(k) require the directed person to provide evidence of -

(i) compliance with -

(A) any provision of this Law and the regulatory Laws, or

(B) any prohibition, restriction, condition, obligation, enforcement requirement,



other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and

- (ii) fulfilment of any of the applicable minimum criteria for licensing (whether in relation to the directed person or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the directed person),

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

- (l) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, require the directed person to take all reasonable steps to procure the transfer of all or any of the directed person's depositors, investors or customers to another licensed institution acceptable to the Commission,
- (m) require the directed person to prepare consolidated accounts (in addition to any accounts required to be prepared by virtue of the provisions of this Law),
- (n) require the directed person to appoint a compliance officer,
- (o) require the directed person to deposit with the

Commission, and to comply with, a recovery plan acceptable to the Commission,

- (p) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (q) contain such ancillary, incidental and supplementary provision as the Commission may determine.

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

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

(6) A direction may be imposed on a person or entity which has at any time been or been deemed to be a directed person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is currently a directed person of that class or description, but only for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of a majority of the members of the Commission.

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

This subsection does not apply to a former licensed institution.

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

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

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

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

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

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

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

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

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

consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

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

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

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

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

- (a) the Court of Alderney, where the directed person is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the directed person is within the jurisdiction of that Court,

- (c) the Royal Court, in any other case.

*Supervised roles*

**Supervised roles.**

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

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

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

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

- (a) a director,
- (b) a money laundering reporting officer,
- (c) a money laundering compliance officer,
- (d) a compliance officer,

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

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

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

- (a) a controller of a class or description referred to in paragraph (a) of the definition of "controller" in section 66 (but not including a person who falls into any other category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection),
- (b) a nominated officer,
- (c) an auditor,

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

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

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

(5) For the avoidance of doubt, the fact that a person is the holder of a supervised role does not of itself establish that 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.



*Information as to institutions*

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

13. (1) The Commission shall establish and maintain, in such form as the Commission may determine, and cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of all institutions holding banking licences (“**the list**”).

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

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

- (a) the name of the licensed institution,
- (b) the addresses or principal places of business of the licensed institution in the Bailiwick,
- (c) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of -
  - (i) any conditions imposed in respect of the banking licence,
  - (ii) any directions given to the licensed institution, or

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

(d) such other particulars as the Commission may determine.

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

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

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

(a) whether in consequence of -

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

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

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

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

as the Commission considers necessary.

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

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

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

**14.** (1) A person ("A") shall not become the holder of an approved supervised role in respect of a licensed institution incorporated in the Bailiwick unless

-

- (a) A or the licensed institution 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 institution 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 7;

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 institution,
- (b) that the interests of depositors or potential depositors of the licensed institution would not in any other manner be threatened by that person becoming the holder of an approved supervised role of that description, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as the holder of an approved supervised role of the description in question -
  - (i) the minimum criteria for licensing would continue to be fulfilled -

(A) in relation to that licensed institution, or

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

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

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

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

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

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

(a) B or the licensed institution 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 institution 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 institution with the requirements of this subsection and any other requirements imposed under subsection (2) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person or the licensed institution.

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

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

and, following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require 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 institution,
- (b) that the interests of depositors, investors or customers of or in the licensed institution would not in any other manner be threatened by that person becoming the holder of a vetted supervised role of that description, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as the holder of a vetted supervised role of the description in question -
  - (i) the minimum criteria for licensing would continue to be fulfilled -
    - (A) in relation to that licensed institution, and
    - (B) in relation to any person who is or is to be the holder of a supervised role in respect of or employee of that licensed institution, or

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

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

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

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

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

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

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



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

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

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

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

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

17. (1) Where a person, alone or with associates -

- (a) is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of a body which is a licensed institution or

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

- (b) becomes entitled to exercise, or control the exercise of, whether in a single transaction or by a series of transactions over whatever period of time, such further percentage of that voting power as increases the total thereof to more than 50% (an “**additional controller holding**”),

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

- (2) Where a person, alone or with associates -

- (a) is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise) of a body which is a licensed institution or (where that body is a company) of any other company of which that body is a subsidiary, and
- (b) ceases to be entitled to exercise, or control the exercise of, whether in a single transaction or by a series of transactions over whatever period of time, such percentage of that voting power as reduces the total thereof to 50% or less (a “**reduced controller holding**”),

he shall notify the Commission of the fact.

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

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

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

(4) The Commission may serve a notice refusing approval for the purposes of subsection (1) if it is not satisfied -

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to exercise, or control the exercise of, any voting power described in subsection (1) in respect of the licensed institution or any company of which the licensed institution is a subsidiary,
- (b) that the interests of depositors or potential depositors of the licensed institution would not in any other manner be threatened by that person becoming entitled to

exercise, or control the exercise of, any such voting power, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as a person entitled to exercise, or control the exercise of, any such voting power -

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

(A) in relation to that licensed institution, or

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

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

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

(6) For the purposes of subsection (1) the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of compliance by that person with the

requirements of subsection (1) and any other requirements imposed under subsection (3) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice on the person concerned refusing its approval of the change.

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

(8) A person ("A") who fails to give notice in accordance with subsection (1) or (2) 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 shall be guilty of the offence if A fails to give such notice within a period of 14 days immediately following the day upon which A becomes or ought reasonably to have become so aware.

## PART II

### APPEALS, OBTAINING OF DOCUMENTS, ACCOUNTS AND OTHER SUPERVISORY REQUIREMENTS

#### *Representations, notice of decisions and appeals*

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

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

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

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or
  - (ii) any notice proposed to be served,
- (d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission

may from time to time determine,

- (e) containing or accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 20(2)), and
- (f) giving particulars of the right of appeal which would be exercisable under section 21 if the Commission were to make the proposed decision.

(3) Where -

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

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

(4) The Commission shall consider any representations made in

response to a notice served under this section before giving further consideration to the proposed decision.

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

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

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of Commission.**

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

- (a) shall be served by the Commission on the person concerned,



- (b) shall state the terms of and the grounds for the decision,
- (c) shall set out particulars of or be accompanied by -
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall contain or be accompanied by, in accordance with the provisions of section 20(1), a statement of the reasons for the decision (but subject to the provisions of section 20(2)), and
- (e) shall give particulars of the right of appeal conferred by section 21;

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

- (2) Where -
  - (a) a ground for a decision notice of which is required to be served under subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

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

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

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

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

- (a) under section 19(1) or (2) of a decision in respect of which a right of appeal is conferred by section 21, or
- (b) under section 18(2) or (3) stating that the Commission is proposing to make such a decision,

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

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

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),

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

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

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

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

- (a) under section 6(1), to refuse an application for a banking licence,
- (b) under section 8, to impose any condition in respect of a banking licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
- (c) to refuse to vary or rescind any condition so imposed,
- (d) under section 9 -
  - (i) not to allow the surrender of a banking licence to be withdrawn, or

- (ii) not to give consent to the surrender of a banking licence,
- (e) under section 11(1) or 24(7), to give any direction or to vary or rescind any direction so given,
- (f) to refuse to vary or rescind any direction so given,
- (g) under section 29, to appoint or require the appointment of a skilled person,
- (h) under section 14 (notification of approved supervised roles), to serve a notice of objection,
- (i) under section 15 (notification of vetted supervised roles), to serve a notice of objection,
- (j) under section 17 (notification of acquisition of additional voting power or reduction of voting power) to serve a notice refusing approval for the purposes of that section,
- (k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons provided pursuant to section 20(1),
- (l) under section 28, to serve a notice under that section,

- (m) for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64 of the Enforcement Powers Law, or
- (n) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

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

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

(a) set the decision of the Commission aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Royal Court thinks fit, or

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

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

(a) subsection (1)(b),

(b) subsection (1)(d)(i),

(c) subsection (1)(e),

(d) subsection (1)(g), or

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

(e) subsection (1)(l),

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

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

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(k) to omit, pursuant to the provisions of section 20(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and, unless the Royal Court orders otherwise, the information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing the appellant.

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

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

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

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



**Restriction on successive challenges.**

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

- (a) the application is a further application, that is to say, an application which relates to a person in respect of whom a previous application for the variation or revocation of that order or other decision has been received by the Commission,
- (b) in the opinion of the Commission, that further application discloses no significant change in any material circumstances concerning that person (the burden of proving that there has been such a significant change being on the applicant), and
- (c) either -
  - (i) an appeal under section 21 relating to a previous such application in respect of that person has been commenced but not yet determined, or
  - (ii) within the period of 12 months immediately preceding receipt of that further application -

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

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

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

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(a) a decision under section 8 to impose, vary or rescind any condition in respect of a banking licence,

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

(c) a decision under section 11(1) or 24(7) to give any direction or to vary or rescind any direction so given,

(d) a decision to refuse to vary or rescind any direction so given,

(e) a decision to appoint or require the appointment of a skilled person under section 29,

(f) a decision to serve notice of objection under section 14 (objection to holders of approved supervised role),

- (g) a decision to serve notice of objection under section 15 (objection to holders of vetted supervised role),
- (h) a decision to serve notice refusing approval for the purposes of section 17 (notification of acquisition of additional voting power or reduction of voting power),
- (i) an order or other decision of a class or description specified by regulations of the Committee.

*Invitations to make deposits*

**Control of advertising.**

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

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

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

class whose membership is determined otherwise than by the Commission.

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

(4) A person ("A") whose business it is to publish or arrange for the publication of advertisements is not guilty of an offence under subsection (3) 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.

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

- (a) an invitation to make a deposit, or

- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.
- (6) For the purposes of this section –
  - (a) an advertisement issued or caused or permitted to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused or permitted to be issued by that person on every day on which that person causes or permits it to be displayed or exhibited,
  - (b) the issue of an advertisement inviting deposits with a person specified in the advertisement shall, unless the contrary is proved (for the avoidance of doubt, on a balance of probabilities), be presumed to have been caused by that person,
  - (c) an advertisement issued outside the Bailiwick shall be deemed to have been issued in the Bailiwick if it is directed to persons in the Bailiwick, or if it is made available to them otherwise than by means published, circulated, displayed, broadcast or transmitted principally outside the Bailiwick or principally for reception outside the Bailiwick.
- (7) If the Commission considers that –

- (a) any deposit advertisement issued or proposed to be issued is misleading, or
- (b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of this section or any rule under it,

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

(8) A direction under this section may (without limitation) contain any or all of the following –

- (a) a prohibition on the issue of any advertisements or any advertisements of a specified class or description,
- (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction,
- (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified class or description,
- (d) a requirement that any advertisements or any advertisements of a specified class or description shall be modified in a specified manner,

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

(9) A direction under this section –

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

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

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

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

(12) In the event of failure by an advertiser to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the advertiser to comply, in such manner as

the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

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

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

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

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

(15) A person who issues or causes or permits to be issued, in the Bailiwick or elsewhere, an advertisement the issue of which is prohibited by a



direction under this section or who otherwise contravenes any provision of such a direction is guilty of an offence.

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

**Unsolicited calls.**

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

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

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

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

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

*Notification of certain matters*

**Reports of large exposures.**

26. (1) A licensed institution other than one whose principal place of business is outside the Bailiwick shall make a report to the Commission if it proposes to enter into transactions relating to any one person which, either alone or together with previous transactions entered into by it in relation to that person, would result in its being exposed to a risk of incurring losses in excess of 25% of its capital base.

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

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

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

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

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

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

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

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

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

(8) Any question as to whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Commission or notified by it to the institution concerned; and those principles may in

particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.

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

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

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

(11) The Committee may by regulation –

- (a) amend subsection (1) so as to substitute, for the percentage for the time being specified therein, some

other percentage,

- (b) make provision for determining for the purposes of this section whether a transaction entered into by an institution relates to any person,
- (c) make provision in respect of the transactions and risks to be taken into account for the purposes of this section, and
- (d) make such provision as it thinks fit for the purpose of carrying this section into effect.

*Powers to obtain information  
and skilled persons, etc*

**Persons to whom section 28 applies.**

27. (1) In section 28 a "**relevant person**" means a person or entity of any of the following classes or descriptions -

- (a) a licensed institution,
- (b) an applicant for a banking licence,
- (c) a former licensed institution, but subject to the provisions of subsection (2),
- (d) a person carrying on any class or description of deposit-taking business -

- (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
- (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of deposit-taking business,

- (e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of deposit-taking business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (f) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,
- (g) where a person (person A) who is a relevant person by virtue of paragraph (f) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, person A,
- (h) an employee of, or a person who is or has at any time been directly or indirectly employed (whether or not

under a contract of employment) by, a relevant person specified in any other paragraph of this subsection,

- (i) any person or entity -
  - (i) which has or has at any time had any direct or indirect proprietary, financial, economic or other interest in or connection with a relevant person specified in any other paragraph of this subsection, or
  - (ii) in or with which a relevant person specified in any other paragraph of this subsection has or has at any time had any such interest or connection,

but subject to the provisions of subsection (5),

- (j) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (k) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (l) a special purpose vehicle or ancillary vehicle of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

(m) a person who is a significant shareholder of a relevant person specified in any other paragraph of this subsection, where that relevant person is a company,

(n) a company of which the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection is a controller, but subject to the provisions of subsection (5),

(o) a person who performs any function for or on behalf of  
-

(i) a relevant person specified in any other paragraph of this subsection, or

(ii) a person acting for or on behalf of a relevant person so specified,

in relation to deposit-taking business, including, without limitation, a person who is an auditor of a relevant person so specified, or

(p) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(2) The provisions of section 28 apply in relation to a former licensed institution only for a period of six years immediately following the date on



which it ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a former licensed institution within that six year period, they may continue to be exercised in respect of it after the expiration of that period.

(3) The provisions of section 28 apply in relation to a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section as they apply in relation to a person or entity which is currently a relevant person of that class or description, but only -

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be a relevant person of that class or description, and
- (b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be a relevant person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a person or entity which has at any time been or

been deemed to be a relevant person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensed institution.

(4) For the avoidance of doubt, if the powers conferred by section 28 are exercised in respect of a licensed institution or other person or entity of a class or description of relevant person referred to in subsection (1), the powers may continue to be exercised in respect of them after -

- (a) the date of revocation, suspension, expiration or surrender of their banking licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be a relevant person of that class or description.

(5) The powers conferred by section 28 may be exercised in relation to a person or entity referred to in subsection (1)(i), an associated party referred to in subsection (1)(j), a group entity referred to in subsection (1)(k), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(l) or a company referred to in subsection (1)(n) only -

- (a) where it appears necessary or desirable to the Commission to do so -
  - (i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or

- (ii) for the purpose of the performance of its functions, and
- (b) with the prior written authority of not less than two ordinary members of the Commission.

**Power to require information and production of documents.**

28. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 27 require 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 that appointed person to be in possession of them.

(4) Any power conferred by or under the provisions of this section to require a person to produce any documents includes power –

- (a) if the documents are produced –
  - (i) to take copies of them or extracts from them, and
  - (ii) to require –
    - (A) the person who was required to produce them, or
    - (B) any other person who is a present or past holder of a supervised role in respect of, or is or was at any time an employee of, or directly or indirectly employed

(whether or not under a contract of employment) by, that person,

to provide an explanation of any of them,

- (b) if any of the documents are not produced, to require the person who was required to produce them to state, to the best of 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 (11) 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.**

29. (1) The Commission may, in relation to an inspected person within the meaning of subsection (4), if it considers it necessary or desirable to do so -

(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 institution,
- (b) an applicant for a banking licence,
- (c) a former licensed institution, but subject to the provisions of subsection (5),



(d) a person carrying on any class or description of deposit-taking business -

(i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or

(ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of business,

(e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of deposit-taking business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(f) an associated party of an inspected person specified in any other paragraph of this subsection, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(g) a person who is the holder of a supervised role in respect of an inspected person specified in any other paragraph of this subsection,

(h) a person who performs any function for or on behalf of

-

(i) an inspected person specified in any other paragraph of this subsection, or

(ii) a person acting for or on behalf of an inspected person so specified,

in relation to deposit-taking business, including, without limitation, a person who is an auditor of an inspected person so specified, or

(i) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(5) The provisions of this section apply in relation to a former licensed institution only for a period of six years immediately following the date on which it ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a former licensed institution within that six year period, they may continue to be exercised in respect of it after the expiration of that period.

(6) The provisions of this section apply in relation to a person or

entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section as they apply in relation to a person or entity which is currently an inspected person of that class or description, but only -

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be an inspected person of that class or description, and
- (b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be an inspected person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensed institution.

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensed institution or other person or entity of a class or description of inspected person referred to in subsection (4), the powers may continue to be exercised in respect of them after -

- (a) the date of revocation, suspension, expiration or surrender of their banking licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be an inspected person of that class or description.

(8) An inspected person being investigated under this section and any person described in subsection (9) -

- (a) shall produce to a skilled person, at such time and place and in such form and manner as the skilled person may require, all documents in 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(5) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such an inspected person.
- (10) A skilled person shall, if so required, produce evidence of his 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.

**Falsification, etc, of documents during investigation.**

30. A person ("A") upon whom a requirement is imposed by or under the provisions of section 28 or 29 or who knows or has reasonable grounds to suspect –

- (a) that such a requirement is likely to be imposed on A, or



- (b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 28 or 29,

and who removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which 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 persons carrying out such an inquiry or investigation.

**Retention of documents.**

31. (1) The following persons or entities -

- (a) a licensed institution,
- (b) a person carrying on any class or description of deposit-taking business -
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder,

or

- (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of deposit-taking business,

- (c) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee,

must retain (and make arrangements for the retention, in the event of their dissolution, winding up, cessation or deregistration, of) all documents and information which they (or any person or entity acting on their behalf pursuant to any such arrangements) were required to make, keep or maintain by or under the provisions of this Law or any other enactment for a period of six years immediately following the date on which they ceased to be -

- (i) a licensed institution, or
- (ii) a person of any other class or description specified in any paragraph of this subsection,

as the case may be.

(2) The period of six years specified in subsection (1) may be extended by the Commission on any number of occasions for further periods each of

which may not exceed three years by notice in writing served on the person in question within the six year period or, as the case may be, within the current period of extension.

(3) The provisions of this section are without prejudice to any other obligation imposed or arising by or under any enactment.

(4) The Commission may make or issue rules, guidance or policies for the purpose of carrying this section into effect.

(5) Rules, guidance or policies under subsection (4) may, without limitation, make provision in respect of -

- (a) the form in which documents and information are to be retained and made available,
- (b) the classes or descriptions of document or information to which this section does, or does not, apply,
- (c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1) must make in respect of the retention of documents and information in the event of their dissolution, winding up, cessation or deregistration, and
- (d) the duties and obligations of persons who, pursuant to arrangements described in subsection (1), retain or have possession or control of the documents and information of a person or entity of a class or description specified in

any paragraph of subsection (1) which has been dissolved, wound up or deregistered or which has otherwise ceased.

(6) Rules under this section may provide that this section shall have effect in respect of any person or entity or class or description of person or entity subject to such exceptions, adaptations and modifications as may be specified in the rules.

#### *Accounts and auditors*

#### **Audited accounts to be available for inspection.**

32. (1) A licensed institution shall make available for inspection by any person on request a copy (which may be in electronic form) of its most recent audited accounts including the auditors' report on the accounts.

(2) The Commission may (without prejudice to the provisions of section 33) make rules prescribing the form in which the accounts and reports described in subsection (1) are to be, the information and particulars to be contained in them and the times or intervals at which and periods in respect of which they are to be drawn up; and rules under this subsection may also make provision in respect of the delivery of such accounts and reports to such persons and at such times or intervals and at such places as may be prescribed.

(3) The Commission may in its absolute discretion, by notice in writing and subject to such conditions as it thinks fit, and either generally or in any particular case or class of case, and whether before or after the event in question, exempt any licensed institution or class or description of licensed institution from the application of all or any of the requirements of subsection (1) and of any rules under

subsection (2) and instead require the institution to make available for inspection by any person on request an abridged version of the accounts or reports described in subsection (1) in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

- (4) A licensed institution which contravenes –
  - (a) any provision of this section or of any rules made under it, or
  - (b) any requirement imposed by or under any such provision,

is guilty of an offence, but only, in the case of rules, to the extent that the rules expressly so provide following consultation with Her Majesty's Procurer.

**Rules as to accounts, etc.**

- 33. (1) The Commission may make rules prescribing –
  - (a) the preparation, keeping, maintenance, submission to the Commission and publication of accounting records,
  - (b) the form in which –
    - (i) a licensed institution's accounting records, and
    - (ii) the auditor's report on the licensed institution's accounts,

are to be,

- (c) the information and particulars to be contained in accounting records and auditors' reports, and the documents to be appended to or accompany them,
- (d) the occasions, times, intervals or places at which, the periods in respect of which and the form and manner in which -
  - (i) accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection, and
  - (ii) any other accounting records, auditors' reports and documents -
    - (A) of a class or description specified in the rules, or
    - (B) required by the Commission in the interests of the public or the reputation of the Bailiwick as a finance centre,

being records, reports or documents prepared, kept or maintained otherwise than in respect of a licensed institution (including, without limitation, records, reports or documents prepared, kept or maintained in respect of a

holder of a supervised role, officer, employee, auditor, associated company, ancillary vehicle or special purpose vehicle or any other class or description of person or entity specified in the rules),

are to be drawn up, furnished and delivered, and

- (e) the persons to whom accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection are to be furnished or delivered, and the times, intervals and places of such furnishing or delivery.

(2) Without prejudice to the provisions of this section or any rules made under it, a licensed institution or other person to whom those provisions apply shall furnish to the Commission upon request any accounting records, auditors' reports and other documents required to be kept by or under those provisions.

(3) In this section "**accounting records**" includes accounts, profit and loss accounts, statements of comprehensive income, statements of account, consolidated accounts, balance sheets, statements of financial position, reports, financial records and other associated records and documents.

(4) The Commission may, by notice in writing, and subject to such conditions as it thinks fit -

- (a) exempt any licensed institution or other person or class or description of licensed institution or person from the

application of all or any of the requirements of this section or any rules made under it, either generally or in any particular case or class of case, and whether before or after the event in question, and

- (b) without prejudice to the provisions of paragraph (a), require a licensed institution or other person, instead of compliance with the requirements of this section or any rules made under it, to furnish to the Commission upon request an abridged version of any accounting records required to be kept by or under the provisions of this section or the rules in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

(5) A licensed institution or other person who contravenes –

- (a) any provision of this section or of any rules made under it, or
- (b) any requirement imposed by or under this section or any rules made under it,

is guilty of an offence, but only, in the case of rules, to the extent that the rules expressly so provide following consultation with Her Majesty's Procureur.

(5) The provisions of this section are in addition to and not in derogation from the provisions of section 32.



**Notification in respect of auditors.**

34. (1) A licensed institution shall appoint auditors as auditors to the licensed institution; and whenever an appointment under this section comes to an end the licensed institution shall, as soon as is reasonably practicable and in any case within a period of 28 days after the day on which that appointment came to an end (or such longer period as the Commission may, in its absolute discretion, by written notice allow) make a fresh appointment of auditors as auditors to the licensed institution.

(2) Without prejudice to the provisions of section 16, if an appointment as auditor under this section comes to an end the licensed institution (if incorporated in the Bailiwick) shall immediately give the Commission written notice and explanation of the fact, giving the name of the person whose appointment has come to an end.

(3) Without prejudice to the provisions of section 16, a licensed institution incorporated in the Bailiwick shall immediately give written notice and explanation to the Commission –

- (a) if the institution proposes to give special notice to its members of a resolution removing an auditor before the expiration of the auditor's term of office,
- (b) if the institution gives notice to its members 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 institution otherwise than pursuant to such a resolution.

(4) An auditor of a licensed institution incorporated in the Bailiwick appointed for the purposes of or in accordance with the provisions of any enactment in force in the Bailiwick or any part thereof, including this Law, shall immediately give written notice and explanation to the Commission if 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 institution,

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 institution as they apply in relation to a licensed institution, but only, subject to the provisions of subsection (6), for a period of six years immediately following the date on which the former licensed institution ceased to hold a banking licence.

(6) Where an auditor of a former licensed institution appointed as mentioned in subsection (4) –

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of the auditor's term of office, or
- (b) signs a qualified audit report on the accounts of the former licensed institution,

by reason of any fraud of –

- (i) the former licensed institution, or
- (ii) any holder of a supervised role in respect of it or any of its employees,

perpetrated at a time when it held a banking licence, the time limit of six years specified in subsection (5) does not apply.

(7) A licensed institution or former licensed institution which contravenes any provision of subsection (1), (2) or (3) is guilty of an offence.

(8) An auditor who without reasonable excuse contravenes any provision of subsection (4) is guilty of an offence.

(9) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed institution, former licensed institution

or auditor or class, description or category of licensed institution, former licensed institution or auditor from the application of all or any of the requirements of subsection (1), (2), (3) or (4), either generally or in any particular case or class of case, and whether before or after the circumstance, event or occasion in question.

**Communications by auditors, etc, to Commission.**

35. (1) No duty to which –

(a) an auditor, or

(b) a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29,

is subject is contravened by reason of the auditor 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

(b) a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29,

to communicate to the Commission matters to which this section applies and which the auditor or that person has reasonable cause to believe is, or is likely to be, of material significance for determining either -

- (i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on any deposit-taking business or to be the holder of a supervised role in respect of a licensed institution, or
- (ii) whether the Commission should perform its functions under the provisions of this Law or any other enactment for the purposes of the protection of the public or the reputation of the Bailiwick as a finance centre.

(3) In relation to an auditor, this section applies to any matter of which the auditor becomes aware in the capacity of auditor and which relates to the business or affairs of –

- (a) a licensed institution,
- (b) an associated party of the licensed institution, or
- (c) where the licensed institution is a partnership or limited liability partnership, any company of which a partner in that partnership or a member of that limited liability partnership is a controller.

(4) In relation to a person appointed to make a report under section 5(5)(a) or as a skilled person pursuant to the provisions of section 29, this section

applies to any matter of which 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 institutions, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

- (6) This section applies in relation to the auditor of a former

licensed institution as it applies in relation to the auditor of a licensed institution.

**Power to request meetings with auditors, actuaries, etc.**

36. (1) The Commission may, whenever it thinks fit, and –

- (a) with a view to the performance of its functions, or
- (b) if it considers it necessary or desirable to do so in the interests of the public or the reputation of the Bailiwick as a finance centre,

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, associated parties or officers of, or holders of supervised roles in respect of, a licensed institution or former licensed institution (the “**client**”) at which the Commission may discuss any aspect of the operation, regulation or licensing of the client.

(2) In the course of a meeting under this section the Commission or any person acting for and on behalf of the Commission -

- (a) may request the provision of such information and documents, in such form, and
- (b) may put such questions and request such explanations,

as the Commission or that person thinks fit, being information, documents, questions and explanations relevant to the purposes mentioned in subsection (1)(a) and (b).

(3) Where a client or any person upon whom a notice is served under subsection (1) fails to co-operate with the Commission or any person acting for and on behalf of the Commission when performing or attempting to perform their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in whatever form reasonably required, to any persons in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question or give any explanation, or otherwise), that failure may be taken into account by the Commission in performing its functions.

(4) For the avoidance of doubt, a meeting (and all ancillary, incidental and supplementary communications and proceedings) may be requested, arranged and conducted, and other requests and requirements may be made or imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

(5) The Commission may direct a person ("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.

*Making of rules, codes and guidance*

**Rules of the Commission.**

37. The Commission may make rules in relation to deposit-taking business and the carrying on thereof by licensed institutions and generally as to the conduct of, and the manner in which licensed institutions conduct, or hold themselves out as conducting, their business.

**Particular matters that may be covered by rules.**

38. Rules under section 37 may, without limitation –

(a) set out general conditions applicable to licensed institutions (and accordingly make provision for

matters in respect of which conditions may be imposed under section 8),

(b) prescribe the manner in which licensed institutions must conduct, govern, manage and operate their business, and this includes, without limitation, matters relating to -

(i) corporate governance,

(ii) internal controls and reporting,

(iii) depositor assets and monies, including, without limitation -

(A) the holding (whether on trust or on any other basis or in any other manner or capacity), management, payment, attribution, separation and safeguarding thereof, including the holding thereof on trust, and

(B) in the event of insolvency, liquidation, dissolution, winding up, cessation, deregistration, receivership, administration or administration management, the priorities and preferences to be accorded by law thereto,

- (iv) the outsourcing of functions,
  - (v) the provision of particulars in respect of deposit-taking business being carried on,
  - (vi) insurance cover of any class or description,
  - (vii) financial resources,
  - (viii) business assets,
  - (ix) requirements in respect of capital, capital resources, funds and liquidity, and
  - (x) the calculation, maintenance and approval of anything described in the above subparagraphs,
- (c) prohibit licensed institutions from carrying on, or holding themselves out as carrying on, deposit-taking business –
- (i) of any specified class or description,
  - (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
  - (iii) in relation to persons of a specified class or

description or persons other than those of a specified class or description,

- (d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensed institutions of any discretionary powers afforded to them by depositors, investors or customers,
- (e) require licensed institutions to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of deposit-taking business, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed institutions and their servants and agents and, without limitation -
  - (i) require licensed institutions to impose and enforce restrictions on the activities carried on by their servants and agents,
  - (ii) enable or require information obtained in the course of carrying on any class or description of the deposit-taking business of a licensed institution to be withheld from persons involved in carrying on any other class or description of the deposit-taking business of that licensed institution,

- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of deposit-taking business,
- (h) require specified information to be given in the form and manner and at the time specified by or under the rules –
  - (i) to the Commission,
  - (ii) to the public, or
  - (iii) to any prescribed class or description of persons,
- (i) require licensed institutions to make provision for the protection of depositors, investors and customers in the event of the cessation of any business or any class or description of business carried on by them,
- (j) impose requirements as to the places and manner in which, and the times during which, banking licences are to be displayed or available for inspection by the public,
- (k) make provision as to the settlement of disputes,
- (l) require the public disclosure by licensed institutions of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation –



- (i) information on the financial position and financial performance of licensed institutions,
  - (ii) information on the basis, methods and assumptions on which any information is prepared,
  - (iii) information on risk exposures and the management thereof, and
  - (iv) information on management and corporate governance, and
- (m) make provision as to the dealings and relationship of licensed institutions with -
- (i) other licensed institutions,
  - (ii) other persons carrying on deposit-taking business,
  - (iii) other persons or bodies holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
  - (iv) depositors, investors, customers and potential depositors, investors and customers of persons

described in subparagraphs (i) to (iii), and

- (v) the Commission,
- (n) impose on licensed institutions obligations to ensure compliance by them, their servants and agents and other persons of a class or description prescribed by the rules with the provisions of this Law,
- (o) make provision otherwise as to the licensing, resources and duties of licensed institutions, and
- (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, banking licences and other relevant documents, including (without limitation) provision –
  - (i) prescribing the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,
  - (ii) prescribing the form and content of relevant documents,
  - (iii) as to the renewal of relevant documents,
  - (iv) prescribing minimum requirements (as to capital and liquidity, solvency, management,

staff, resources and any other matter referred to in paragraph (b)) to be attained by an applicant for a relevant document,

and in this paragraph "**relevant document**" means a licence, authorisation, registration, permission, consent, exemption, dispensation, concession, authority, declaration, statement, notice, direction or other document sought from or granted or given by the Commission under the provisions of or for the purposes of this Law.

**Rules as to annual return.**

39. (1) The Commission may make rules requiring the submission by licensed institutions to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

(2) The annual return shall contain such information and shall be accompanied by such documents as may be prescribed, being information and documents considered by the Commission to be necessary –

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism,

(c) in the interests of -

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 57).

(4) The information and documents that rules under this section may require to be submitted to the Commission include, without limitation –

(a) audited accounts and auditors' management letters (or confirmation that the auditors have confirmed that no auditors' management letter is required to be issued),

(b) an up to date business plan,

(c) a 12 month financial forecast,

(d) a certificate signed by a prescribed person confirming -

(i) compliance throughout the period covered by the annual return with the provisions of this Law, the appointed Laws and any other

prescribed enactment,

- (ii) that accounts have been prepared and deposited in accordance with the provisions of this Law,
- (e) the names of and other prescribed particulars in respect of the holders of supervised roles in respect of, or the officers or employees of, a licensed institution,
- (f) the number of staff employed,
- (g) the number of depositors, investors or customers, whether in total or whether in respect of different classes or descriptions of deposit-taking business,
- (h) the licensed institution's estimate of the value of assets held by it or on its behalf,
- (i) such other information and documents as may be prescribed or as the Commission may determine.

(5) Rules under this section may, without limitation, make provision in relation to –

- (a) the furnishing, keeping and obtaining, by persons of prescribed descriptions, of information, documents and records of prescribed classes or descriptions,
- (b) the provision of copies of or extracts from, and of

explanations as to, information and documents submitted to the Commission in accordance with the rules,

- (c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,
- (d) the provision of reports, in such form as may be prescribed or as the Commission may determine, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,
- (e) the payment of any fees prescribed by regulations under section 7 in respect of the submission of annual returns,
- (f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,
- (g) the service of notices,
- (h) the submission of a single or composite return for licensed institutions which also hold a licence under any of the regulatory Laws.

- (6) In this section "**prescribed**" means prescribed by the rules.

**Rules as to annual review.**

40. (1) Without prejudice to any other provision of this Law, a licensed institution shall review, in accordance with the provisions of rules made by the Commission under this section, the business carried on in or from within the Bailiwick or elsewhere by -

- (a) the institution,
- (b) any associated party or group entity thereof,
- (c) any undertaking established by the institution (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
- (d) any person or entity in or with which the institution has or has at any time had any direct or indirect proprietary, financial, economic or other interest or connection,

not less than once in every financial year (but subject to the provisions of the rules).

(2) Rules of the Commission under this section may without limitation require a review under this section of or in respect of the following matters

-

- (a) the institution's individual loans, asset classification and loss provisioning (including on and off balance sheet exposures),

- (b) whether the institution has in place control systems which are effective to ensure –
  - (i) that all returns and other documents required by or under the provisions of this Law to be submitted to the Commission are duly submitted, and
  - (ii) that any inaccuracies in any such returns and other documents are identified, corrected and reported to the Commission expeditiously,
- (c) whether the institution's financial record keeping systems and data systems are reliable,
- (d) whether any activity has been entered into in the course of the institution's business in respect of which no holder of a supervised role in respect of the institution has a sound knowledge,
- (e) the responsibilities and conduct of the institution's board of directors with respect to corporate governance principles,
- (f) whether there has been effective control by the institution's board of directors over every aspect of risk management,
- (g) the institution's control environment,



- (h) compliance by the institution and the holders of supervised roles in respect of, and officers and employees of, the institution with -
  - (i) the provisions of this Law, the appointed Laws and any other enactment prescribed by the rules, and
  - (ii) the minimum criteria for licensing.
- (i) any other matters considered by the Commission to be necessary –
  - (i) for the purposes of enabling the Commission to perform its functions, or
  - (ii) in the interests of -
    - (A) the public, or
    - (B) the reputation of the Bailiwick as a finance centre.
- (3) Rules of the Commission under this section may also, without limitation –
  - (a) specify the maximum amount of time that may elapse between the completion of any two successive annual

reviews,

(b) require a licensed institution, either immediately or within such period as may be prescribed or as the Commission may determine -

(i) to notify the Commission that it has completed the annual review,

(ii) if requested, to provide the Commission with a copy of the annual review, and

(iii) if an annual review reveals shortcomings or deficiencies in respect of any of the matters set out in the rules -

(A) to report the shortcomings or deficiencies to the Commission together with details of the steps it proposes to take to remedy the position, and

(B) to provide the Commission with such documents, information and other evidence and verification as the Commission may require for the purpose of establishing that such steps have been taken,

(c) require the annual review to be made in such form and

manner and to contain or be accompanied by such information and documents as may be prescribed or as the Commission may determine,

- (d) specify the dates, times, intervals, occasions, events or circumstances on, at, in or within which, and periods in respect of which, the annual review is to be made, and
- (e) make provision in relation to any other matter in respect of which rules may be made under section 37 or 39.

(5) In this section –

**"annual review"** means the review required to be carried out by a licensed institution by or under the provisions of this section,

**"financial year"** means the period covered by a licensed institution's accounts in respect of its business,

**"prescribed"** means prescribed by the rules.

**Codes of practice and guidance.**

41. (1) The Commission, after consultation with –
- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and

- (b) such other persons as appear to the Commission to be appropriate,

may (without prejudice to any other power conferred by the provisions of this Law or the regulatory Laws as to the making of codes or guidance) issue such codes of practice and/or such guidance as the Commission thinks necessary –

- (i) for the purpose of providing clarification or guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to depositor, investor and customer protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by -

- (A) persons carrying on business regulated by this Law, or

- (B) any other persons to whom the code or guidance applies,

- (ii) generally for the purposes of providing clarification or guidance in respect of the provisions of or for the purposes of, or in connection with the administration, implementation or enforcement of, this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules may be made under section 24, 32, 33, 37, 39 or 40.

(2) The Commission may, after consultation as mentioned in subsection (1), amend the whole or any part of a code of practice or guidance issued under this section and issue that amended code or guidance.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of a provision of a code of practice or guidance issued under this section does not of itself render 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 is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

*General requirements for licensed institutions*

**Minimum capital requirement for licensed institutions.**

42. (1) A licensed institution incorporated in the Bailiwick shall maintain -

- (a) a paid up share capital (in the case of an institution which is a company limited by shares), or
- (b) capital of such other class or description as the Commission may specify or as the Commission may by regulation prescribe (in any other case),

of not less than the minimum capital requirement or an equivalent sum in any currency acceptable to the Commission (calculated in respect of any particular day at the exchange rate between the relevant currencies prevailing at the close of that day).

(2) In computing, for the purposes of subsection (1), the paid up share capital of a company limited by shares, use of any share premium account is permitted.

(3) In this section "**minimum capital requirement**" means £1,000,000 or such other sum (whether in sterling or any other currency) as the Commission may by regulation prescribe.

**System of notification to Commission and related matters.**

43. (1) The business of a licensed institution must be carried on in such a way as to ensure that –

- (a) proprietary acquisitions (including subsidiaries, branches and the creation of joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) amounting to over 5% of the institution's capital base are only entered into with the express approval of the Commission which approval shall be sought by way of not less than 30 days' prior notice of the proposed transaction; and when considering whether to grant approval for the transaction the Commission must consider whether –
  - (i) the transaction will expose the institution to undue risk,
  - (ii) the institution has the necessary resources to undertake the transaction, and
  - (iii) any factors hinder effective supervision, in particular if the transaction is to occur in a jurisdiction in which the legal system prohibits or hinders the sharing of information,
- (b) the intention to enter into proprietary acquisitions (including subsidiaries, branches and the creation of joint ventures) and investments (including equity investments, real property investments and investments in other non-financial assets) over £1,000,000, other than those referred to in subparagraph (a), is reported to the

Commission not less than 30 days prior to the proposed transaction, and

- (c) information on the condition of the bank's asset portfolios, including classification of credits, the level of provisioning and major problem assets together with information on other risk types such as material non-credit transactions and operational losses is sent to the Commission on a calendar year quarterly basis (no later than the end of the month following the end of the quarter), and where such information causes the Commission concern the institution shall increase its level of provisions and capital base and the frequency of reports to the Commission, as the Commission so directs.

(2) A person -

- (a) seeking the approval of the Commission under subsection (1)(a),
- (b) making a report to the Commission under subsection (1)(b), or
- (c) providing information to the Commission under subsection (1)(c),

shall, at such times, intervals and places as may be specified by the Commission, provide to the Commission such information and documents (and thereafter such



additional information and documents), of such class or description, in such form and containing such information and particulars, as may be so specified and as the Commission may require for the purpose of the performance of its functions.

### PART III

#### DISCLOSURE OF INFORMATION

##### **Restrictions on disclosure of information.**

44. (1) Subject to the provisions of section 45 –
- (a) no person who under the provisions of or for the purposes of this Law receives information relating to the business, property or affairs of any person,
  - (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

- (2) A person who discloses information in contravention of this section is guilty of an offence.

##### **Cases where disclosure is permitted.**

45. Section 44 does not preclude –
- (a) the disclosure of -
    - (i) information which at the time of disclosure is or

has already been made available to the public  
from other sources, or

- (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,

- (b) the disclosure of information for the purpose of enabling or assisting -

- (i) the Commission, or
- (ii) any body established by Ordinance under section 48 of this Law or section 84 of the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,

- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensed institution or former licensed institution if it appears to the Commission that the disclosure would enable or assist the Commission to perform its functions or would otherwise be in the interest of the public or the reputation of the Bailiwick as a finance centre,

- (d) where, in order to enable or assist it to perform its functions, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that 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 of a licensed institution or former licensed institution, or

- (ii) a person appointed to make a report under section 5(5)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or

- (iii) a person appointed as a skilled person pursuant

to the provisions of section 29 of this Law or the corresponding provisions of the regulatory Laws,

(k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of -

(i) information obtained under the provisions of section 28 or 29 of this Law or sections 7 to 13 of the Enforcement Powers Law, or

(ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,

(l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,

(m) the disclosure of information to a person or entity responsible for a scheme for compensating depositors, investors or customers (whether in the Bailiwick or elsewhere) -

(i) if it appears to the Commission that the

disclosure would enable or assist the recipient of the information or the Commission to perform its functions, and

- (ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission,
- (n) the disclosure of information by the Commission for the purposes or in the circumstances described in -
  - (i) section 21(2) of the Financial Services Commission Law,
  - (ii) section 49 of the Protection of Investors Law,
  - (iii) section 39 of the Regulation of Fiduciaries Law,
  - (iv) section 80 of the Insurance Business Law,
  - (v) section 57 of the Insurance Managers and Intermediaries Law, or
  - (vi) section 20 of the Enforcement Powers Law, or
- (o) the disclosure of information for the purpose of enabling or assisting -

- (i) the Registrar of Companies,
- (ii) the Alderney Registrar,
- (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),
- (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,
- (v) the Principal Ombudsman appointed under section 4 of that Law,
- (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),
- (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017),
- (viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or

- (ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

**Information supplied to Commission by relevant supervisory authority.**

46. (1) This section applies, to the exclusion of section 44, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) –

- (a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,
- (b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and
- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

(3) In requesting the consent of a relevant supervisory authority for the purposes of subsection (2)(b), the Commission must provide that authority with -



- (a) the name of any person to whom it proposes to disclose the information, and
- (b) an accurate description of that person's functions.

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the consent of the relevant supervisory authority was given.

(5) For the avoidance of doubt, and without limitation, nothing in this section prevents the disclosure of information by the Commission -

- (a) for the purposes or in the circumstances described in section 45(h), or
- (b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

- (a) receives information described in subsection (1) from the Commission, or
- (b) obtains any such information directly or indirectly from

a person who has so received it,

shall disclose the information except with, and in accordance with the conditions of, the consent of the Commission.

(7) A person who discloses information in contravention of subsection (6) is guilty of an offence.

**Royal Court to take Commission's undertakings into account.**

47. The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business, property or affairs of any person held, received or obtained by it under the provisions of or for the purposes of this Law or the regulatory Laws (whether pursuant to those provisions or otherwise)

-

(a) take into account -

- (i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to which the Commission is subject in respect of the information,
- (ii) any undertaking entered into by the Commission in relation to the use, disclosure, safekeeping and return of the information, and
- (iii) any conditions (whether as to the use and

disclosure of the information or otherwise)  
subject to which the information is held or was  
received or obtained, and

(b) where the information has been supplied to the  
Commission by a relevant supervisory authority -

(i) give the Commission a reasonable opportunity  
to consult that authority with a view to obtaining  
its consent to the disclosure, and

(ii) where such consent is not forthcoming, or is  
given subject to conditions, take into account the  
authority's decision and the reasons for it.

#### PART IV

#### COMPENSATION SCHEMES

##### **Power to establish compensation schemes.**

48. (1) The States may by Ordinance establish any scheme considered by them to be desirable or expedient for the protection and compensation of depositors, investors or customers in cases where licensed institutions or former licensed institutions are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their deposit-taking business.

(2) Without prejudice to the generality of the foregoing, an Ordinance under subsection (1) may make provision in respect of all or any of the following matters –

- (a) the establishment of a fund for the protection and compensation of depositors, investors and customers,
- (b) the holding, management and application of the said fund,
- (c) the making of contributions to the fund and the levying thereof from licensed institutions and former licensed institutions,
- (d) the costs, expenses and other items which are to be chargeable to the fund,
- (e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made,
- (f) the description and amount of the deposits or other liabilities, and the description of creditors, to be protected,
- (g) the liability of licensed institutions and former licensed institutions in respect of compensation payments,
- (h) the payment or repayment of claims, contributions or other monies, or any description thereof,
- (i) the tax treatment of contributions and repayments

thereof,

- (j) the crediting of monies and income to the fund,
- (k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,
- (l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body,
- (m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights.

## PART V

### OFFENCES AND PENALTIES

#### **Penalties.**

49. (1) A person guilty of an offence under section 16(5), 17(8), 24(3), 26(5), 32(4), 33(5) or 34(7) or (8) is liable –

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(2) A person guilty of an offence under any other provision of this Law is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsections (1)(a) and (2)(a) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by section 13 of the Government of Alderney Law, 2004<sup>f</sup> and section 11 of the Reform (Sark) Law, 2008<sup>g</sup>.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there shall be deemed to be a fresh offence on each day on which the display or exhibition continues.

**Criminal liability of directors, etc.**

50. (1) Where an offence under the provisions of this Law is committed by a company or other legal person and is proved to have been committed with the

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<sup>f</sup> Order in Council No. III of 2005; amended by No. XXII of 2010; and No. XI of 2012.

<sup>g</sup> Order in Council No. V of 2008; amended by No. VI of 2008; No. XXVII of 2008; No. XIV of 2010; and No. XII of 2011.

consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a company, any director, controller, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any member,
- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

the person referred to in the appropriate paragraph above 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.

**Criminal proceedings against unincorporated bodies.**

51. (1) Where an offence under the provisions of this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of -
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

the person referred to in the appropriate paragraph above as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under the provisions of this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subsection (1), be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law shall be paid from the funds of that body.



**Defence of due diligence.**

52. In any proceedings for an offence under the provisions of this Law it is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that 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.

**Jurisdiction.**

53. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under the provisions this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

PART VI  
GENERAL PROVISIONS

*Miscellaneous*

**Commission to have regard to guidance, etc, under FSC Law and other matters.**

54. (1) In performing its functions under the provisions of this Law -
- (a) the Commission must (so far as relevant) -
    - (i) take into account any written guidance of a general character given by the Committee under section 7(1)(a) of the Financial Services Commission Law, and

- (ii) act in accordance with any written directions of a general character given by the Committee under section 7(1)(b) of that Law,

concerning the policies to be followed by the Commission in relation to the supervision of finance business in the Bailiwick and the manner in which any function of the Commission is to be performed,

- (b) the Commission may take into account (so far as relevant) -

- (i) any guidance notes or international standards relating to deposit-taking business and regulation issued by a body recognised by the Commission and identified in a code issued under the provisions of this Law,

- (ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law or the Financial Services Commission Law,

- (iii) any matter to which it may have regard under the provisions of this Law when performing the function in question, and

- (iv) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action,

duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction, order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any licensed institution, holder of a supervised role or other person or entity, and

- (c) the Commission must have regard to the objectives of -
  - (i) protecting the public and the reputation of the Bailiwick as a finance centre,
  - (ii) ensuring that any relevant markets are fair, efficient and transparent, and
  - (iii) reducing risks to the financial system in the Bailiwick.

(2) The provisions of this section are in addition to and not in derogation from any other provision of this Law or any other enactment or rule of law relating to the functions of the Commission or the performance thereof and the matters which it must or may take into account.

**Verification of information and execution of documents.**

55. (1) The Commission may require that any information, statement or other document provided to it in compliance or purported compliance with any obligation imposed by or under the provisions of this Law shall be verified in such manner as the Commission may reasonably specify.

(2) Without prejudice to any other enactment or rule of law relating to the form, execution and submission of documents, all returns and other documents required by or under the provisions of this Law to be submitted to the Commission by a licensed institution shall be signed by the chief executive and chief financial officer of the institution, or their alternates, unless the Commission directs otherwise (whether generally or in any particular case or class or description of case).

(3) Any information, statement or other document which is not verified in accordance with a requirement made under subsection (1) shall be deemed for the purposes of this Law not to have been provided in accordance with the obligation referred to in that subsection and the said obligation shall accordingly be deemed not to have been complied with.

(4) Any return or other document which is not signed in accordance with subsection (2) or a direction of the Commission thereunder shall be deemed for the purposes of this Law not to have been submitted as required by or under the provisions of this Law, and that requirement shall accordingly be deemed not to have been complied with.

**Service of notices and documents.**

56. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served upon

—

- (a) an individual (“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

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(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body -

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post to -

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post to, its principal office in the Bailiwick, or by being transmitted to its electronic address,

(f) subject to the provisions of section 57, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

and in this section -

(i) **"by post"** means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) **"electronic address"** includes, without limitation, an e-mail address and telecommunications address,

(iii) **"relevant electronic address"** means an electronic address -

(A) with which, in the opinion of the Commission, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to 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 court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the “**appropriate Court**” means –



- (a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) A document shall be deemed for the purposes of this Law to have been –

- (a) addressed to the person concerned, and

- (b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

**Documents to be submitted in electronic form and by electronic means.**

57. (1) Where a document is required or permitted to be submitted to the Commission by or under the provisions of or for the purposes of this Law, and except to the extent that express provision to the contrary is made by or under the provisions of this Law, the document -

- (a) shall be in such electronic form, and shall be submitted by such electronic means and to such electronic address, as the Commission may require, whether in any particular case or class of cases or generally, or
- (b) shall be in such non-electronic form, and shall be submitted by such non-electronic means, as the Commission may in its absolute discretion require in any particular case or class of case.

(2) Where a document is required by or under the provisions of or for the purposes of this Law to be in such form as the Commission may require, the Commission may, in its absolute discretion and without limitation, require the

document to be in such electronic form or non-electronic form as the Commission may require, whether in any particular case or class of cases or generally.

(3) This section applies, without limitation, to any, and to anything accompanying any, application, notice, return, validation, accounts, report, statement, consent, declaration, questionnaire, computation, plan or signature.

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000<sup>h</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>i</sup> and the Electronic Transactions (Sark) Law, 2001<sup>j</sup>.

**Evidence.**

58. (1) In any proceedings, a certificate signed on behalf of the Commission certifying –

- (a) that a particular person is or is not a licensed institution or former licensed institution or was or was not a licensed institution or former licensed institution at a particular time,
- (b) that a particular person was or was not registered under the provisions of section 4 of the Ordinance of 1971 or was or was not so registered at a particular time,

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<sup>h</sup> Order in Council No. VIII of 2000.

<sup>i</sup> Order in Council No. XXVI of 2001.

<sup>j</sup> Order in Council No. X of 2001.

- (c) the date on which a particular person obtained or ceased to hold a banking licence or was registered or ceased to be registered as mentioned in paragraph (b),
- (d) the terms of any conditions imposed in respect of a particular person's banking licence or subject to which a person was registered as mentioned in paragraph (b),

is admissible in evidence.

- (2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

*Liability of States, Commission, etc*

**Exclusion of liability.**

- 59. (1) No liability shall be incurred –
  - (a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
  - (b) by the Commission,
  - (c) by Her Majesty's Greffier, Her Majesty's Sheriff, the Registrar of Companies, the Alderney Greffier or the Prévôt of Sark,
  - (d) by any member, officer or servant of any of the aforesaid, or

- (e) by any other person or entity specified by Ordinance of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under the provisions of this Law unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>k</sup>.

- (3) The States may by Ordinance amend this section.

*Ordinances, regulations and rules, etc*

**Ordinances, regulations, rules, codes and guidance, etc - general.**

60. (1) The States may by Ordinance make such provision as they think fit –

- (a) for the purpose of carrying the provisions of this Law into effect, and
- (b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

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<sup>k</sup> Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; and G.S.I. No. 27 of 2006.

(2) Any Ordinance, regulation, rule, code, guidance, principles, policies or instructions under the provisions of this Law –

(a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions, as the case may be, hereunder,

(b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance or regulation -

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (3)),

(ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,

(iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2)(b)(i) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(4) The States may by Ordinance empower -

- (a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and
- (b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (2)(b)) provision amending this Law.

(5) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, code, guidance, principles policies or instructions may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) The Committee (and any other committee of the States of



Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 70), consult

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(a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney, and

(b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 70) ceases to have effect –

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of

subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section -

- (a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and
- (b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).

(11) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

**Regulations : consultation with Committees and Commission and laying before the States.**

61. Regulations made under the provisions of this Law -

- (a) where made by the Commission, shall be made after

consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,

- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

**Publication of regulations, rules, codes and guidance, etc.**

62. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the

performance of its functions under the provisions of this Law, and

- (b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any banking licences, consents, registrations, permissions and authorisations or otherwise in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the Commission may charge such fee -

- (a) as may be prescribed by regulations under section 7, or
- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

**Making and effect of contravention of rules.**

63. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules -

- (a) in such manner as the Commission considers best calculated to bring them to the attention of persons

likely to be affected by them and the public in general,  
and

- (b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render 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.

**Regulations and rules are statutory instruments.**

64. For the avoidance of doubt, regulations and rules under the provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>1</sup>, the provisions of which shall apply accordingly.

**Power to adapt rules, codes and guidance, etc, under this Law.**

65. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensed institution or an applicant for a banking licence, by notice in writing served on it adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to its circumstances or to the circumstances of any particular business carried on by it.

(2) The Commission shall not exercise the powers conferred by subsection (1) in any case unless it appears to the Commission that –

- (a) compliance with the requirements in question would be unduly burdensome for the licensed institution or applicant having regard to the benefit which compliance would confer on depositors, investors or customers, and
- (b) the exercise of those powers will not result in any undue risk to depositors, investors or customers.

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<sup>1</sup> Recueil d'Ordonnances Tome X, p. 16.

(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).

*Interpretation, repeals, commencement, etc*

**Interpretation.**

66. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) –

"**accountant**" means a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>m</sup>,

"**actuary**" means -

- (a) a fellow of the Institute and Faculty of Actuaries in the United Kingdom (or a member or other person subject to the rules of such other body as the Committee may approve by regulation),
- (b) any other person approved for the time being by the

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<sup>m</sup> Order in Council No. VIII of 2008.

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),

**"additional controller holding"** : see section 17(1)(b),

**"administration manager"** means a person appointed by the Royal  
Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"advertisement"** includes every form of advertising and any means of  
bringing an invitation or information to the notice of any person including,  
without limitation, by publication, broadcast, electronic means, circulars,  
notices, window displays, posters, brochures and leaflets, and references to the  
"issue" of an advertisement shall be construed accordingly,



**"advocate"** means an Advocate of the Royal Court of Guernsey,

**"Alderney company"** means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>n</sup>,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004<sup>o</sup>,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (Alderney) Law, 1994,

**"ancillary vehicle"** : see section 20(3) of the Protection of Investors Law,

**"appointed Laws"** means -

(a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,

(b) the Criminal Justice (Proceeds of Crime) (Bailiwick of

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<sup>n</sup> Order in Council No. XXXIV of 1994; there are amendments not material to this enactment.

<sup>o</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

Guernsey) Law, 1999,

- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

**"appointed person"** : see section 28(1),

**"appropriate Court"** : see sections 11(14), 24(14) and 56(6),

**"approved supervised role"** : see section 12(1),

**"associate"**, in relation to any person, means –

- (a) the spouse, civil partner or child of that person,
- (b) a person with whom that person is living as if they were married or civil partners (a **"cohabitant"**),
- (c) any body of which that person is a director,
- (d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of

that person,

- (e) if that person is a company –
  - (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (f) where that person is an unincorporated body, any director of that body,
- (g) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power (whether in general meeting or otherwise) in relation to a company, that other person:

Provided always that the Commission may by regulation amend the definition of "associate",

**"associated company"** means a company of a description set out in paragraph (d) of the definition of "associated party",

**"associated party"**, in relation to any person, means -

- (a) any person who is a partner (or fellow member, in the

case of a limited liability partnership) of that person,

- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) any body in respect of which that person holds a supervised role,
- (e) where that person is a company -
  - (i) a holding company, subsidiary or related company of that person,
  - (ii) a subsidiary or related company of a holding company of that person,
  - (iii) a holding company of a subsidiary of that person, or
  - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

Provided always that the Commission may by regulation amend the definition of "associated party",

**"auditor"** means –

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008<sup>P</sup> and who is, where required by or under the provisions of this Law, approved by the Commission to audit the accounts of licensed institutions,
- (b) any other person who performs or has performed the functions of an auditor of a licensed institution,

**"Bailiff"** means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"Bailiwick body"** means -

- (a) a Guernsey body, being -

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<sup>P</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

- (i) a Guernsey company,
  - (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or
  - (iii) an unincorporated body whose principal place of business is in Guernsey,
- (b) an Alderney body, being -
- (i) an Alderney company, or
  - (ii) an unincorporated body whose principal place of business is in Alderney,
- (c) a Sark body, being any body, other than one mentioned in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

**"banking licence"** : see section 1,

**"Banking Supervision Law, 1994"** means the Banking Supervision

(Bailiwick of Guernsey) Law, 1994<sup>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> No. XIII of 1994 (Ordres en Conseil Vol. XXXV(1), p. 271); there are amendments not material to this enactment.

<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),

**"capital base"**, in relation to a licensed institution and any relevant subsidiary thereof, means the capital base -

- (a) determined by the Commission under the provisions of section 26(9) after consultation with the licensed institution concerned and in accordance with principles published by the Commission; and any such determination may be varied from time to time, or
- (b) where the Commission has made no such determination, determined in accordance with rules or guidance of the Commission under the provisions of section 26(9) in respect of large exposures and the risk thereof, capital base and related matters,

**"chief executive"**, in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

**"chief risk officer"** means an officer, appointed by a licensed institution or by another person or entity, with responsibility, under the terms



of the officer's appointment, for the risk management functions of the licensed institution, person or entity (as the case may be),

**"child"** includes a stepchild, an adopted child and an illegitimate child,

**"civil partner"** means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and **"civil partnership"** shall be construed accordingly,

**"close relative"** of a person means –

- (a) his spouse, civil partner or cohabitant,
- (b) his children, parents, step-parents, brothers, sisters, half-brothers, half-sisters, step-brothers and step-sisters, and
- (c) the spouse, civil partner or cohabitant of any person within paragraph (b),

**"cohabitant"** : see paragraph (b) of the definition of "associate",

**"Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

the **"Committee"** means the States of Guernsey Policy and Resources

Committee or such other committee as the States may specify by Ordinance,

**"committee"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

**"company"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"compliance officer"** means an officer, appointed by a licensed institution or by another person or entity, with responsibility, under the terms of 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 licensed institution, person or entity with -
  - (i) the provisions of this Law, the Financial Services Commission Law and the regulatory Laws,
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and
  - (iii) its policies and procedures relating to corporate

governance, ethics and standards of conduct,  
and

- (b) fulfilment by that licensed institution, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensed institution, person or entity, of the applicable minimum criteria for licensing,

**"contract of employment"** means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

**"contravention"** includes failure to comply,

**"controller"**, in relation to a body, means –

- (a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) a shareholder controller or an indirect controller,
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>t</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"deposit"** : see section 2,

**"deposit advertisement"** : see section 24(5),

**"deposit-taking business"** : see section 3,

**"determined"**, in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

**"directed person"** : see section 11(1),

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

**"documents"** includes information stored or recorded in any form (including, without limitation, in electronic form) and -

- (a) in relation to information stored or recorded otherwise than in legible form, references to its production,

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<sup>t</sup> Ordres en Conseil Vol. XVIII, p. 315; there are amendments not material to this enactment.

howsoever expressed, include (without limitation) references to the production of a copy of the information in a form -

- (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form,
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language:

Provided always that the Committee may by regulation amend the definition of "documents",

**"electronic address"** : see section 56(1)(ii),

**"electronic form"**, in relation to the electronic storage or recording of information or documents, includes storage or recording by means of any form of information storage technology,

**"electronic means"**, in relation to the sending of a document, includes any technology by which the document is -

- (a) sent and received at its destination by means of electronic equipment for the processing (which

expression includes, without limitation, digital compression) or storage of data, and

- (b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of "electronic address", "electronic form" and "electronic means",

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

**"enactment"** includes any Law, Ordinance and subordinate legislation,

**"Enforcement Powers Law"** means the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>u</sup>,

**"entity"** includes a scheme, trust, structure, arrangement and cell of a protected cell company,

**"equity share capital"** means, in relation to a company limited by shares, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

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<sup>u</sup> Approved by the States of Deliberation on the \*\* August, 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 Services Commission Law"** means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>v</sup>,

**"former licensed institution"** means an institution which –

- (a) does not hold and is not deemed to hold a banking licence under this Law, but
- (b) has previously held or been deemed to hold such a licence or a banking licence under the Banking Supervision Law, 1994 or was registered under the provisions of section 4 of the Ordinance of 1971,

and also includes any person described in section 68(2) or (3),

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<sup>v</sup> Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to this enactment.

**"foundation"** means -

- (a) a Guernsey foundation, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and however named),

**"foundation official"** means -

- (a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012<sup>w</sup>, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

**"functions"** includes duties, powers and privileges,

**"functions"** of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law,

**"general partner"** means -

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<sup>w</sup> Order in Council No. I of 2013.



- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>x</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

"**group**", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

"**group entity**" means a body or entity carrying on deposit-taking business and which is not a licensed institution but which is part of a group containing a licensed institution,

"**Guernsey company**" means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>y</sup>,

"**Guernsey foundation**" means a foundation established under the

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<sup>x</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.

<sup>y</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

Foundations (Guernsey) Law, 2012,

**"Guernsey limited liability partnership"** means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>z</sup>,

**"Guernsey limited partnership"** means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality),

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"holding company"** : see Schedule 3,

**"Income Tax Law"** means the Income Tax (Guernsey) Law, 1975<sup>aa</sup>,

**"indirect controller"**, in relation to a body, means a person in accordance with whose directions or instructions -

- (a) any director of that body,
- (b) where that body is a company, any director of any other company of which that body is a subsidiary, or

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<sup>z</sup> Order in Council No. VI of 2014.

<sup>aa</sup> Ordres en Conseil Vol. XXV, p. 124; there are amendments not material to this enactment.

(c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or, where that body is a company, in any other company of which that body is a subsidiary) directly or indirectly which makes it possible to exercise significant influence over the management of the body,

**"information"** includes, for the avoidance of doubt, a signature,

**"inspected person"** : see section 29(4),

**"institution"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

**"international agreement"** means -

- (a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities

(Implementation) (Bailiwick of Guernsey) Law, 1994<sup>bb</sup>,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

**"investment company"** : see section 79(1) of the Protection of Investors Law,

**"jurisdiction"** includes any country, territory or other place,

**"legal professional privilege"**, and communications or items subject thereto : see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>cc</sup>,

**"licensed institution"** means an institution which holds or which is deemed to hold a banking licence,

**"limited liability partnership"** means -

- (a) a Guernsey limited liability partnership, or
- (b) an entity formed under the laws of a jurisdiction outside

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<sup>bb</sup> Order in Council No. III of 1994.

<sup>cc</sup> Ordres en Conseil Vol. XLIII, p. 617; there are amendments not material to this enactment.

Guernsey, 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

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<sup>dd</sup> Order in Council No. XII of 1995; there are amendments not material to this enactment.

- (ii) the others (referred to in this Law as "**limited partners**") have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"**liquidator**" includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

"**member**", in respect of -

- (a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008<sup>ee</sup>,
- (b) an Alderney company, has the same meaning as in the Companies (Alderney) Law, 1994, and
- (c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited 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 2,

**"money laundering compliance officer"** means the money laundering compliance officer appointed in accordance with paragraph 15 of Schedule 3 to the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999,

**"money laundering reporting officer"** means the money laundering reporting officer appointed in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999,

**"nominated officer"** means the nominated officer nominated in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

**"notified supervised role"** : see section 12(3),

**"officer"**, in relation to a company, includes a director, liquidator, manager and secretary thereof,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his 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>ff</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,

**"Ordinance of 1971"** means the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971<sup>gg</sup>,

**"ordinary members of the Commission"** means the members of the

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<sup>ff</sup> Order in Council No. III of 2005; there are amendments not material to this enactment.

<sup>gg</sup> Recueil d'Ordonnances Tome XVII, p. 225.



Commission other than the Chairman,

**"other supervised manager"** : see section 12(3)(d),

**"partner"** has the same meaning as in the Partnership (Guernsey) Law, 1995<sup>hh</sup>, and includes a general partner and a limited partner of a limited partnership,

**"partnership"** : see section 1 of the Partnership (Guernsey) Law, 1995,

**"person"** includes -

- (a) an individual,
- (b) a company,
- (c) any other legal person, and
- (d) an unincorporated body,

**"Policy and Finance Committee of the Chief Pleas of Sark"** : see subsection (2),

**"Policy and Finance Committee of the States of Alderney"** : see subsection (2),

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<sup>hh</sup> Ordres en Conseil Vol. XXXVI, p. 179; there are amendments not material to this enactment.

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Companies (Guernsey) Law, 2008,

**"Protection of Investors Law"** means the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>ii</sup>,

the **"provisions of"** this Law or any other enactment include the provisions of -

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the **"purposes of"** this Law or any other enactment),

**"public"** means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, depositors, investors and customers and potential depositors, investors and customers (whether of any person or entity,

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<sup>ii</sup> Approved by the States of Deliberation on the \*\* August, 2020.

or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, depositors, investors or customers of, in or with that body,

the "**purposes of**" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

**"qualifying capital interest"** : see the definition of "related company" below,

**"recovery plan"** means a plan, in such form and containing such information as may be determined by the Commission and as may be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency),

**"reduced controller holding"** : see section 17(2)(b),

**"Registrar of Companies"** means the holder for the time being of the office established under section 495(1) of the Companies (Guernsey) Law, 2008<sup>jj</sup>,

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<sup>jj</sup> Order in Council No. VIII of 2008; there are amendments not material to this enactment.

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>kk</sup>,

**"regulatory Laws"** means –

- (a) the Protection of Investors Law,
- (b) the Regulation of Fiduciaries Law,
- (c) the Insurance Business Law,
- (d) the Insurance Managers and Intermediaries Law,
- (e) the Financial Services Commission Law,
- (f) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,
- (g) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (h) the Enforcement Powers Law,
- (i) any other enactment prescribed for the purposes of this

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<sup>kk</sup> Approved by the States of Deliberation on the \*\* August, 2020.

Law by regulation 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 electronic address"** : see section 56(1)(iii),

**"relevant document"** : see section 38(p),

**"relevant person"** : see section 27(1),

**"relevant supervisory authority"** means -

- (a) an authority performing in the Bailiwick or any other jurisdiction -
  - (i) functions corresponding to any functions of the Commission, or
  - (ii) such other functions as the Committee may by regulation prescribe,

including functions in respect of the Bailiwick,

- (b) any international organisation, that is to say, any

organisation, community or body -

- (i) of which the United Kingdom or any other sovereign power is a member, or
- (ii) which is established under any international agreement,
- (c) a self-regulatory organisation, or
- (d) a resolution authority, that is to say, a public authority that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction -

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or
- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

**"servant"** includes a person working under a contract for services and an employee,

**"shareholder controller" -**

- (a) in relation to a body, and subject to the provisions of paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,
- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,



**"significant shareholder"**, in relation to a body, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"skilled person"** : see section 29(1),

**"special purpose vehicle"** means a body or entity created solely for the purposes of -

- (a) a particular financial transaction or series of financial transactions, or
- (b) the holding and/or lending of assets,

**"States"** means the States of Deliberation,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"subsidiary company"** : see Schedule 3 (and **"subsidiary"** has the same meaning),

**"supervised body"** is –

- (a) a body –
  - (i) which is a licensee within the meaning of the Protection of Investors Law or which is exempt from licensing under section 44 of that Law, or
  - (ii) which holds an authorisation or registration under section 8 of that Law,
- (b) a body which is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law,
- (c) a body which is a licensee within the meaning of the Insurance Business Law,
- (d) a body which is a licensee within the meaning of the Insurance Managers and Intermediaries Law,
- (e) a body which is of any other class or description prescribed for the purposes of this Law by regulations of the Committee,

**"supervised role"** means an approved supervised role, a notified supervised role or a vetted supervised role,

**"transmitted"** : see section 56(1)(iv),

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>II</sup>,

**"vetted supervised role"** : see section 12(2).

(2) Unless the contrary intention appears, references in the provisions of this Law to –

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance Committee of the Chief Pleas of Sark,

are references to the committees of those islands for the time being performing the functions respectively conferred by or under the provisions of this Law on those committees.

(3) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

(5) Subsection (4) is without prejudice to any other power to enact

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<sup>II</sup> Ordres en Conseil Vol. XXXI, p. 278.

Ordinances or subordinate legislation conferred by the provisions of this Law.

**Repeals.**

67. The following enactments or provisions of enactments are repealed –

- (a) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>mm</sup>,
- (b) section 2(1) of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002<sup>nn</sup>,
- (c) in the Insurance Business (Bailiwick of Guernsey) Law, 2002, item 3 in the table in Part I of Schedule 6<sup>oo</sup>,
- (d) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003<sup>pp</sup>,
- (e) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008<sup>qq</sup>,
- (f) the Banking Supervision (Bailiwick of Guernsey)

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<sup>mm</sup> Order in Council No. XIII of 1994 (Ordres en Conseil Vol. XXXV(1), p. 271).

<sup>nn</sup> Order in Council No. XVII of 2002.

<sup>oo</sup> Order in Council No. XXI of 2002.

<sup>pp</sup> Order in Council No. XVI of 2003.

<sup>qq</sup> Order in Council No. XVI of 2008.

(Amendment) (No. 2) Law, 2008<sup>rr</sup>,

- (g) in the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009<sup>ss</sup>, the entries relating to the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (h) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010<sup>tt</sup>,
- (i) section 4(c) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015<sup>uu</sup>,
- (j) section 1(2)(c) of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015<sup>vv</sup>,
- (k) section 63(3) of the Single Euro Payments Area

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<sup>rr</sup> Order in Council No. IV of 2009.

<sup>ss</sup> Order in Council No. XIII of 2010.

<sup>tt</sup> Order in Council No. XXI of 2010.

<sup>uu</sup> Ordinance No. XII of 2015.

<sup>vv</sup> Ordinance No. XXXIX of 2015.

(Guernsey) Ordinance, 2016<sup>ww</sup>,

(l) paragraph 3 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017<sup>xx</sup>,

(m) paragraph 3 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017<sup>yy</sup>,

(n) paragraph 3 of the Second Schedule to the Transfer of Funds (Sark) Ordinance, 2017<sup>zz</sup>,

(o) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2000<sup>aaa</sup>,

(p) the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008<sup>bbb</sup>,

(q) the Banking Supervision (Bailiwick of Guernsey)

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<sup>ww</sup> Ordinance No. II of 2016.

<sup>xx</sup> Alderney Ordinance No. III of 2017.

<sup>yy</sup> Ordinance No. XXVII of 2017.

<sup>zz</sup> Sark Ordinance No. X of 2017.

<sup>aaa</sup> G.S.I. No. 3 of 2000.

<sup>bbb</sup> G.S.I. No. 1 of 2008.

Regulations, 2010<sup>ccc</sup>,

(r) regulation 2 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010<sup>ddd</sup>,

(s) regulation 1(2) of the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017<sup>eee</sup>,

(t) paragraph 2(2) of Schedule 4 to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>fff</sup>.

**Savings and transitional provisions.**

68. (1) An institution which, immediately before the commencement of this Law, was a licensed institution within the meaning of the Banking Supervision Law, 1994 shall, on the commencement of this Law, be deemed -

(a) to be a licensed institution, and

(b) to have been granted a banking licence,

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<sup>ccc</sup> G.S.I. No. 35 of 2010.

<sup>ddd</sup> G.S.I. No. 83 of 2010.

<sup>eee</sup> G.S.I. No. 50 of 2017.

<sup>fff</sup> Order in Council No. VI of 2017.

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly.

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Banking Supervision Law, 1994 in respect of that institution's banking licence or in respect of licensed institutions generally shall apply in respect of the banking licence under this Law which that institution is deemed to hold by virtue of this subsection.

(2) A person who before the commencement of this Law was at any time but had ceased to be a licensed institution within the meaning of the Banking Supervision Law, 1994 shall (unless that person is for the time being a licensed institution within the meaning of this Law) be deemed to be a former licensed institution within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(3) A person who at any time before the commencement of this Law carried on deposit-taking business -

- (a) and who was exempted by the provisions of the Banking Supervision Law, 1994 from the requirement to be licensed thereunder, or
- (b) otherwise in such circumstances specified in the provisions of that Law as not to require licensing thereunder,

in respect of such business, but -



- (i) who is no longer carrying on deposit-taking business, or
- (ii) who is not exempted by the provisions of this Law from the requirement to be licensed hereunder or who may not carry on deposit-taking business in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

shall (unless that person is for the time being a licensed institution within the meaning of this Law) be deemed to be a former licensed institution within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(4) Any reference in any enactment, however expressed, to an enactment or any provision of an enactment repealed by this Law and re-enacted (with or without modification) by, or by any provision of, this Law or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the enactment, or the provision of the enactment, as re-enacted.

(5) Any reference in any enactment, however expressed, to a licensed institution or a banking licence within the meaning of the Banking Supervision Law, 1994 shall be construed, after the commencement of this Law, as a reference to a licensed institution or (as the case may be) a banking licence within the meaning of this Law.

(6) Any Ordinance or subordinate legislation made or other thing

done under an enactment or any provision of an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under, or under any provision of, this Law or the Enforcement Powers Law shall have effect, after the commencement of this Law, as if made or done under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(7) Subsection (6) applies to any subordinate legislation made under a provision of an enactment repealed by this Law notwithstanding that the corresponding provision of this Law or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(8) Anything in the process of being done on the commencement of this Law under an enactment or a provision of an enactment repealed by this Law which could be done under, or under any provision of, this Law or the Enforcement Powers Law may be continued to be done after the commencement of this Law under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(9) The Committee may make regulations containing such savings and transitional provision as it thinks fit -

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of any enactment repealed by this Law which are re-enacted (with or without modification) by the provisions of this

Law to the corresponding provisions of this Law.

(10) Regulations under subsection (9) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(11) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any other provision of this Law.

**Citation.**

69. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) Law, 2020.

**Commencement.**

70. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

SCHEDULE 1  
EXEMPTED PERSONS

1. The States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

2. The central bank of a member state of the Organisation for Economic Co-operation and Development.

3. The National Savings Bank of the United Kingdom within the meaning of the Post Office Act 1969<sup>ggg</sup>.

4. (1) A friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974<sup>hhh</sup> or section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970<sup>iii</sup>.

(2) This paragraph applies only to the acceptance of deposits in the course of carrying out transactions permitted by the rules of the society concerned.

5. (1) An insurer licensed under section 7 of the Insurance Business Law to carry on insurance business of a class specified in that Law.

(2) An insurer carrying on insurance business (in each case within the meaning of the Insurance Business Law) in such circumstances as not to require

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<sup>ggg</sup> An Act of Parliament (1969 c. 48).

<sup>hhh</sup> An Act of Parliament (1974 c. 46).

<sup>iii</sup> An Act of Parliament (1970 c. 31).

licensing by virtue of section 5 of that Law.

(3) This paragraph applies only to the acceptance of deposits in the course of lawfully carrying on –

- (a) in the case of a person described in subparagraph (1), insurance business of the class authorised by the licence,
- (b) in the case of a person described in subparagraph (2), insurance business of the class to which the exemption applies,

in accordance with the provisions of the Insurance Business Law.

SCHEDULE 2  
MINIMUM CRITERIA FOR LICENSING

**Integrity and skill.**

1. (1) The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on –

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of its activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting its business, the applicant or licensed institution shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensed institution.

**Fit and proper persons.**

3. (1) The applicant or licensed institution is a fit and proper person

to hold a banking licence and every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed institution is a fit and proper person to hold that position.

(2) In determining whether a person (“A”) is a fit and proper person to hold a banking licence or a particular position, regard shall be had to –

- (a) A’s probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed institution or (as the case may be) of that position,
- (b) the diligence with which 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 banking 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 depositors, investors and customers 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 under paragraph 1(2).

(3) Without prejudice to the generality of subparagraphs (1) and (2), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that that person has –

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any of the provisions of –
  - (i) this Law,
  - (ii) the Ordinance of 1971,

- (iii) the regulatory Laws,
- (iv) the repealed regulatory legislation (within the meaning of the Enforcement Powers Law),
- (v) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, any rules, codes, guidance, principles, policies and instructions issued by the Commission in relation thereto), or
- (vi) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –
  - (A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries Law), banking, insurance, investment or other financial services, or
  - (B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons in respect of whom there has been a winding up event within the meaning of the Enforcement Powers

Law),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on that person's method of conducting business or that person's suitability to carry on deposit-taking business, or

(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.

(4) For the purposes of this paragraph and for the avoidance of doubt –

(a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,

(b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

- (c) "enactment" includes any primary, secondary or tertiary legislation of any jurisdiction in the British Islands or elsewhere.

**Business to be directed by at least two individuals.**

- 4. (1) At least two individuals who are –
  - (a) resident in the Bailiwick,
  - (b) of appropriate standing and experience, and
  - (c) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensed institution.

(2) For the purposes of subparagraph (1)(c), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

**Composition of board of directors.**

5. Where the applicant or licensed institution is incorporated in the Bailiwick, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the applicant or licensed institution and the nature and scale of its operations.

**Business to be conducted in prudent manner.**

6. (1) The applicant or licensed institution conducts or, in the case of an institution which is not yet carrying on deposit-taking business, will conduct its business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to the provisions of subparagraph (4), an applicant or licensed institution shall not be regarded as conducting its business in a prudent manner unless –

(a) it maintains or, as the case may be, will maintain –

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) it maintains or, as the case may be, will maintain adequate liquidity, having regard to –

(i) the relationship between its liquid assets and its actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and its assets will mature,

- (iii) the nature and scale of its operations,
  - (iv) the risks inherent in those operations, and in the operations of any other company in the same group so far as capable of affecting the applicant or licensed institution, and
  - (v) any other factors appearing to the Commission to be relevant,
- (c) it makes or, as the case may be, will make adequate provision for –
- (i) depreciation or diminution in the value of its assets (including provision for bad or doubtful debts),
  - (ii) liabilities which will or may fall to be discharged by it, and
  - (iii) losses which it will or may incur, and
- (d) it maintains or, as the case may be, will maintain –
- (i) adequate accounting and other records of its business, and
  - (ii) adequate systems of control of its business and

records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), the Commission shall also have regard, in determining whether an applicant or licensed institution is to be regarded as conducting its business in a prudent manner, to the following –

- (a) whether the applicant or licensed institution has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,
- (b) the systems of control and record keeping of the applicant or licensed institution for business undertaken or contemplated and the provision made by it for the proper maintenance and development of such systems,
- (c) the complaints history of the applicant or licensed institution, and
- (d) where the applicant or licensed institution is part of a group, whether the structure or organisation of the group hinders effective supervision.

(4) For the purposes of –

- (a) subparagraph (2)(a), an appropriate amount is –
  - (i) an amount commensurate with the nature and

scale of its operations, and

- (ii) an amount and nature sufficient to safeguard the interests of its depositors, investors and customers and potential depositors, investors and customers, having regard to –

- (A) the nature and scale of its operations,

- (B) the risks inherent in those operations, and in the operations of any other company in the same group so far as capable of affecting the applicant or licensed institution, and

- (C) any other factors appearing to the Commission to be relevant,

- (b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensed institution, the Commission may, to such extent as it thinks appropriate, take into account –

- (i) the assets of the applicant or licensed institution, and

- (ii) the facilities which are available to it and which are capable of providing liquidity within a reasonable period, and



- (c) subparagraph (2)(d) –
  - (i) records and systems shall not be regarded as adequate unless they are such as to enable –
    - (A) the business of the applicant or licensed institution to be managed prudently, and
    - (B) the applicant or licensed institution to comply with the duties imposed on it by or under the provisions of this Law or any enactment listed in paragraph 3(2)(f), and
  - (ii) in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the applicant's or licensed institution's directors.

**Information required by the Commission.**

7. The applicant, licensed institution and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensed institution, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

**Notification to, and approval by, board of directors of certain matters.**

8. The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on in such a way as to ensure that –

- (a) the board of directors are notified promptly if the applicant or institution receives information which could have a material effect on assets and consequently on its levels of provisions, capital base and overall strength, and
- (b) all transactions with associates or associated parties receive prior approval by the board of directors and are not on more favourable terms than transactions with persons who are not associates or associated parties.

**Risk management.**

9. The business of the applicant or licensed institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on –

- (a) with a sufficient number of individuals employed in the Bailiwick to conduct all essential functions, which includes risk management functions,
- (b) in such a manner as to ensure that permanent compliance and risk management functions are conducted in the Bailiwick to assess the risks and legal compliance of all business conducted from or within the Bailiwick,

- (c) with an internal audit function, or an audit function that is compliant with the published guidance of the Commission.

**Power to make regulations.**

- 10. The Committee may make regulations amending the provisions of this Schedule.

### SCHEDULE 3

#### MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

(a) that other –

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of a company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

(a) that a person cannot be appointed thereto without the exercise in that person's favour by that other company of such a power,

- (b) that a person's appointment thereto follows necessarily from that person's appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to items (c) and (d), any shares held or power exercisable –
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for

securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

**Power to make regulations.**

5. The Committee may make regulations amending the provisions of this Schedule.