

PROJET DE LOI

ENTITLED

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been

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No. I of 2001; as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003 (No. XIV of 2003); the Disclosure (Bailiwick of Guernsey) Law, 2007 (No. XVI of 2007); the Companies (Guernsey) Law, 2008 (No. VIII of 2008); the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2008 (No. XXV of 2008); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010 (No. XIX of 2010); the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001 (No. XXXVII of 2001, Recueil d'Ordonnances Tome XXVIII, p. 493); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009); the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 3 of 2008); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 83 of 2010). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XXXV(2), p. 738); the Government of Alderney Law, 2004 (No. III of 2005); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance".

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The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000

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ENTITLED

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000

THE STATES, in pursuance of their Resolutions of the 1st June, 2000^a and the 29th November, 2000^b, 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) A person other than a Bailiwick company shall not carry on by way of business, in or from within the Bailiwick, any of the activities described in section 2 (hereinafter called "**regulated activities**") except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 6 (hereinafter called a "**fiduciary licence**").

^a Article VI of Billet d'État No. XII of 2000.

^b Article I of Billet d'État No. XXIII of 2000.

(2) A Bailiwick company shall not 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 shall not of itself affect any civil liability arising in respect of the carrying on of the activity.

NOTE

The following cases have referred to this Law:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13;

Guernsey Financial Services Commission v. Claridges Trustees Limited, Claridges Trust Company (Guernsey) Limited, First Nominees Limited and Second Nominees Limited 2007–08 GLR N-19.

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 or

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- protector for trusts,
- (ii) the provision to trusts of corporate or individual trustees 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,
 - (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,
 - (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, 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.

(2) The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, 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 him in such manner as may be specified in the regulations.

NOTES

The following case has referred to section 2:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.¹

Exempted activities.

3. (1) The following activities are exempted from the operation of section 2 and accordingly are not regulated activities –

- (a) acting as trustee or custodian of a collective investment scheme authorised by the Commission under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^c,
- (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

^c Ordres en Conseil Vol. XXX, pp. 281 and 243; Recueil d'Ordonnances Tome XXIV, p. 324; and No. XII of 1995.

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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 company,
- (f) acting as a director of a company which is a subsidiary of a company described in paragraph (b), (c), (d) or (e),
- (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, except in any case where the Commission disappplies the exemption contained in this paragraph in respect of any person on the grounds that, having regard to the criteria of Schedule 1, the Commission is

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not satisfied that he is a fit and proper person to be or to become a director of a company; and, where the Commission decides so to disapply the exemption contained in this paragraph, it shall serve notice to that effect on the person concerned, giving particulars of the right of appeal set out in section 19,

- (h) acting as bookkeeper or company secretary 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 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 partner of a partnership –
 - (i) which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^d or which is exempt from licensing under section 29 of that Law, or

^d Ordres en Conseil Vol. XXX, p. 281.

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- (ii) which holds an authorisation under section 8 of that Law,
- (k) acting as a limited partner in a limited partnership,
- (l) 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),
- (m) 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 of otherwise,

- (n) acting as guardian of a minor or person under legal disability where the appointment is made by, and where the discharge of the functions of guardian is subject to the supervision of, the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (o) 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,
- (p) 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,
- (q) 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,
- (r) [...] the drafting of minutes of meetings by a lawyer, accountant or actuary,
- (s) the preparation and auditing of accounts,

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(t) 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 the person carrying on the profession or business does not hold himself out as undertaking those activities,

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

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

(i) by the States of Guernsey Telecommunications Board or the States of Guernsey Post Office Board (or any company succeeding to the undertaking of either of those Boards) or by an internet or telecommunications service provider, or

(ii) where the address is provided solely for the service of process or the service of notice

under a contract,

- (w) any activity carried on under the authority of and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory Laws,
- (x) the following activities when carried on by a registered insurance intermediary within the meaning of section 49A of the Insurance Business (Guernsey) Law, 1986^e –
 - (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 Income Tax] under the provisions of Part XIII of the Income Tax (Guernsey) Law, 1975^f, or
 - (ii) the formation of, and the provision of advice in relation to the formation of, a pension scheme or trust of a life assurance policy,
- (y) any particular activity, transaction or appointment specifically exempted from the operation of section 2

^e Ordres en Conseil Vol. XXIX, p. 214; section 49A was inserted by Order in Council No. II of 1998.

^f Ordres en Conseil Vol. XXV, p. 124; Vol. XXVIII, p. 278; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No. VIII of 1993; No. XXV of 1994; No. XXII of 1997.

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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, and
- (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.

(2) The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, 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) For the avoidance of doubt, an activity which is not exempted from the operation of section 2 by or under 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.

NOTES

In section 3,

the words omitted in square brackets in paragraph (r) of subsection (1) were repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 2, with effect from 1st July, 2008;

the words in square brackets in paragraph (x) of subsection (1) were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of

Majority) (Sark) Law, 1986, section 1(1) and section 1(2), with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1) and section 1(3), with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to a "minor" shall be construed as a reference to a person under the age of 18 years.

In accordance with the provisions of the Financial Services Commission (Fees) Regulations, 2010, regulation 10, with effect from 1st January, 2011, the prescribed fees for the purposes of this section are as set out therein.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.²

The Insurance Business (Guernsey) Law, 1986 has since been repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002, subject to the savings in, first, section 102 of the 2002 Law and, second, section 78 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

Licensing

Categories of fiduciary licences.

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

- (a) a full fiduciary licence, and

- (b) a personal fiduciary licence.
- (2) A full fiduciary licence –
- (a) may only be granted to a company or a partnership,
 - (b) 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 company, to carry on by way of business, in or from within any place whatsoever, any regulated activities, and
 - (c) shall authorise any director, manager, partner 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 company, to carry on by way of business, in or

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from within any place whatsoever, any regulated activities,

provided that he does so only in the course of his duties as a director, manager, partner or (as the case may be) employee of the licensed fiduciary.

- (3) 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 company or unincorporated body, or as partner of any partnership, whether incorporated, registered or established in or under the laws of the Bailiwick or elsewhere,
 - (ii) acting as trustee (provided that he does not act as a sole trustee) or as protector for trusts,
 - (iii) acting as, or accepting an appointment made by will as, an executor of a will or administrator of an estate.

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 full 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 statement or information provided by him 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 a director, controller, manager or partner of the applicant to provide such additional information or documents as the Commission may reasonably require for the purpose of determining the application.

(6) Any information or statement 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 or statement 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 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) 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 [General Purposes and Advisory Committee] of the Chief Pleas of Sark.

NOTES

The following case has referred to section 5:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.³

Grant or refusal of fiduciary licences.

6. (1) The Commission may, upon receipt of an application for a fiduciary licence, grant or refuse the application.

(2) The Commission shall not grant an application for a fiduciary licence unless satisfied that the criteria specified in Schedule 1 are fulfilled –

- (a) in relation to the applicant, and
- (b) in the case of an application for a full fiduciary licence, in relation to any person who is or is to be a director, controller, partner or manager of the applicant.

(3) In considering whether or not the criteria specified in Schedule 1 are so fulfilled, the Commission –

(a) shall take into account such written guidance and shall act in accordance with such written directions as may be given by the Committee under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^g in relation to regulated activities, and

(b) may take into account –

(i) the provisions of any code of practice issued under section 35, and

(ii) any matter to which it may have regard under section 8 when considering whether or not to 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.

NOTE

The following case has referred to section 6:

^g Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1987; and No. I of 1998.

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

Fees for fiduciary licences.

7. The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, by regulation prescribe fees to be payable to the Commission in respect of applications for and the grant of fiduciary licences and, periodically, by licensed fiduciaries in respect of fiduciary licences; and such regulations may provide for the payment of interest or penalties in the event of default in the due payment of fees.

NOTES

The following Regulations have been made under section 7:

Financial Services Commission (Fees) Regulations, 2010.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.⁴

Revocation of fiduciary licences.

8. (1) The Commission may revoke a fiduciary licence if it appears to the Commission that –

(a) any of the criteria of Schedule 1 are not or have not been fulfilled –

(i) in relation to the licensed fiduciary, or

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- (ii) in the case of a full fiduciary licence, in relation to any person who is or is to be a director, controller, partner, manager or employee of the licensed fiduciary,
- (b) the licensed fiduciary or any other person described in paragraph (a)(ii) has committed an offence under any provision of this Law or of any Ordinance, regulation or rule made under it or has otherwise contravened any prohibition, restriction, condition, requirement, direction or arrangement imposed by or under any such provision,
- (c) a person has become a controller or partner of the licensed fiduciary in contravention of section 14 or has become or continued to be a controller or partner after being given notice of objection under section 14 or 15,
- (d) the Commission has been provided with false, misleading, deceptive or inaccurate information –
 - (i) by or on behalf of the licensed fiduciary, or
 - (ii) in connection with an application for a fiduciary licence, by or on behalf of a person who is or is to be a director, controller, partner, manager or employee of the licensed fiduciary,

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- (e) the interests of clients of the licensed fiduciary are in any way threatened, whether by the manner in which the licensed fiduciary is conducting or proposes to conduct its affairs or for any other reason,
- (f) any fee prescribed by regulations under section 7 payable by the licensed fiduciary or in respect of the licence has not been paid,
- (g) a relevant supervisory authority in a place outside the Bailiwick has withdrawn from the licensed fiduciary an authorisation corresponding to a fiduciary licence under this Law,
- (h) a composition or arrangement with creditors has been made in respect of the licensed fiduciary, or a receiver has been appointed in respect of, or possession has been taken of, any property of the licensed fiduciary by or on behalf of its creditors or the holders of debentures issued by it,
- (i) where the licensed fiduciary is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which corresponds as nearly as may be to any event described in paragraph (h), (k), (l) or (m),
- (j) the licensed fiduciary has not carried on by way of business a regulated activity in the Bailiwick or elsewhere within a period of 12 months beginning on

the day on which the fiduciary licence was granted or, having so carried on a regulated activity in the Bailiwick or elsewhere, has subsequently not done so for any period of more than six months,

- (k) the affairs of the licensed fiduciary have been declared in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (l) a preliminary vesting order has been made against the licensed fiduciary in respect of any real property in the Bailiwick, or
- (m) otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, a liquidator (provisional or otherwise) has been appointed to act in relation to the estate or affairs of the licensed fiduciary or the licensed fiduciary has passed a special resolution requiring it to be wound up voluntarily.

(2) In considering whether or not to revoke a fiduciary licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 6 when considering whether or not to grant an application for a fiduciary licence.

(3) A decision of the Commission to revoke a fiduciary licence shall not, subject to the provisions of subsection (4), have effect until the end of the period within which, under section 19, an appeal can be brought against the

revocation or, if an appeal is brought within that period, until the appeal is determined or withdrawn.

(4) Where the Commission is of the view that it is necessary or desirable to do so –

- (a) in the interests of the clients of a licensed fiduciary, or
- (b) for the protection or enhancement of the reputation of the Bailiwick,

the Commission may apply to the Court for an order under this subsection directing that its decision to revoke a fiduciary licence should, without prejudice to any appeal in respect of the decision under section 19, have immediate effect; and the Court may make an order under this subsection on such terms as it thinks just.

(5) An application by the Commission for an order under subsection (4) may, with the approval of the Court, and on such terms as the Court may direct, be made *ex parte*.

(6) In this section "**the Court**" means –

- (a) where the licensed fiduciary 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,

the Court of Alderney,

- (b) where the licensed fiduciary 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, the Court of the Seneschal,
- (c) in any other case, the Royal Court.

Conditions of fiduciary licences.

9. (1) The Commission may, 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 of licensed fiduciary or to any particular licensed fiduciary.

(3) The Commission may vary or rescind any condition 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 of the licensed fiduciary; and 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,

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- (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 of transactions,
- (e) require the removal of any director, controller, manager, partner or employee 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 or subsidiary 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 shall, whether or not constituting an offence under subsection (5), be a ground for the revocation of the licence but shall not of itself invalidate any transaction completed under the authority of the licence before the date of 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 restricted 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 to any matter to which it may have regard under section 6 or 8 when considering whether or not to grant an application for a fiduciary licence or to revoke a fiduciary licence.

NOTES

In section 9, paragraph (j) of subsection (4) was inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(2), with effect from 11th August, 2003.

The following case has referred to section 9:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

Notice of refusal, etc, of fiduciary licences.

- 10.** (1) Where the Commission decides –
- (a) to refuse a fiduciary licence, or
 - (b) otherwise than with the agreement of the licensed fiduciary concerned –
 - (i) to revoke a fiduciary licence, or
 - (ii) to impose, vary or rescind any condition in respect of a fiduciary licence,

the Commission shall serve upon the applicant or (as the case may be) the licensed fiduciary concerned notice in writing of the decision setting out, where appropriate, particulars of the condition in question.

(2) A notice under subsection (1) shall state the grounds of the Commission's decision and shall give particulars of the right of appeal conferred by section 19.

(3) Where –

- (a) a ground for a decision mentioned in subsection (1) is that any criterion of paragraph 3 of Schedule 1 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) a condition of a fiduciary licence requires the removal of any person as a director, controller, partner, manager or employee,

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 19.

Surrender of fiduciary licences.

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

(2) A surrender shall take effect upon service of the notice or such later date as may be specified therein; and where a later date is so specified,

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the licensed fiduciary may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is to take effect, not being earlier than the date upon which the first notice was served.

(3) The surrender of a fiduciary licence shall 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 licensed fiduciary, by notice in writing to the licensed fiduciary allows the surrender to be withdrawn.

(4) Where, on receipt of an application under subsection (3), the Commission decides not to allow the surrender of a fiduciary licence to be withdrawn –

- (a) it shall give written notice of its decision to the licensed fiduciary, setting out particulars of the right of appeal conferred by section 19, and
- (b) without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender shall not have effect before the end of the period within which, under section 19, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined or withdrawn.

(5) Upon the surrender of a fiduciary licence no fee paid by the licensed fiduciary concerned pursuant to regulations under section 7 shall be refundable.

Directions

Directions to fiduciaries.

12. (1) The Commission may –
- (a) when serving notice under section 10 upon a licensed fiduciary that the Commission has decided to revoke his fiduciary licence,
 - (b) at any time after such a notice has been served (whether before or after the fiduciary licence is revoked),
 - (c) at any time after a licensed fiduciary has served a notice under section 11 surrendering his fiduciary licence (whether or not with immediate effect), or
 - (d) in the case of a licensed fiduciary whose fiduciary licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter,

give the licensed fiduciary such directions as appear to the Commission to be desirable in the interests of the clients of the fiduciary, whether for the purpose of safeguarding assets or otherwise.

(2) Without prejudice to the generality of subsection (1), directions thereunder 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 his business in a particular way,

- (b) prohibit or impose limitations upon the carrying on of regulated activities and other business,
- (c) prohibit the licensed fiduciary from soliciting business either generally or from persons who are not already clients,
- (d) prohibit the licensed fiduciary from entering into any other transaction or class of transactions,
- (e) require the removal of any director, controller, partner, manager or employee.

(3) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1), and any direction given by virtue of either of those paragraphs shall cease to have effect, if –

- (a) the Commission serves upon the licensed fiduciary concerned notice in writing that it no longer proposes to revoke his fiduciary licence, or
- (b) the Commission's decision to revoke the fiduciary licence is reversed on appeal.

(4) No direction shall be given by virtue of paragraph (c) of subsection (1), and any direction given by virtue of that paragraph shall cease to have effect –

- (a) if the Commission allows the licensed fiduciary, under

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section 11(3), to withdraw the surrender of his fiduciary licence, or

- (b) in cases where the Commission decides not to allow the licensed fiduciary, under section 11(3), to withdraw the surrender of his fiduciary licence, if the Commission's decision is set aside on appeal under section 19.

(5) A licensed fiduciary who contravenes any provision of a direction under subsection (1) is guilty of an offence.

(6) A contravention by a licensed fiduciary of a direction under subsection (1) shall not of itself invalidate any transaction completed under the authority of the fiduciary licence concerned.

(7) Where a direction under subsection (1) requires the removal of a person as director, controller, partner, manager or employee of a licensed fiduciary, the Commission shall serve upon that person a copy of the direction (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 19.

(8) The Commission may vary or rescind any direction under subsection (1) by notice in writing served upon the licensed fiduciary concerned.

(9) Directions under subsection (1) shall give particulars of the right of appeal conferred by section 19.

Information as to fiduciaries

Publication of names of licensed fiduciaries.

13. [(1) The Commission shall 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; and the list shall state, in relation to each person mentioned, the category of fiduciary licence held by him.]

(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 list of all persons holding fiduciary licences.

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

(4) 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.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

NOTE

In section 13, subsection (1) was substituted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010, section 2, with effect from 8th November, 2010.

Objection to controllers

Notification of and objection to controllers.

14. (1) No person shall become –
- (a) a shareholder controller or an indirect controller of a licensed fiduciary which is a company, or
 - (b) a partner in a licensed fiduciary which is a partnership,

unless he has notified the Commission in writing of his intention to become such a controller or partner and the Commission has notified him in writing that there is no objection to his becoming such a controller or partner.

(2) Following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require him to furnish such additional information or documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection.

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

- (a) that the person concerned is a fit and proper person to become a controller of the description in question, or a partner, 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 a controller of that description or a partner, or

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- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed fiduciary as a controller of the description in question or as a partner –
 - (i) the criteria of Schedule 1 would continue to be fulfilled –
 - (A) in relation to that licensed fiduciary, and
 - (B) where a full fiduciary licence is held, in relation to any person who is or is to be a director, controller, partner, manager 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 –
 - (a) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied, and
 - (b) give particulars of the right of appeal conferred by section 19.

Objection to existing controllers.

15. (1) Where in the opinion of the Commission a person who is –
- (a) a shareholder controller or an indirect controller of a licensed fiduciary which is a company, or
 - (b) a partner of a licensed fiduciary which is a partnership,

is not or is no longer a fit and proper person to be such a controller or partner, the Commission may serve him with a written notice of objection.

(2) A notice of objection under this section shall give particulars of the right of appeal conferred by section 19.

Contraventions by controllers.

16. A person who –
- (a) becomes a shareholder controller or an indirect controller or partner in contravention of section 14(1), or
 - (b) becomes or continues to be such a controller or partner after a notice of objection has been served on him under section 14 or 15,

is guilty of an offence unless he shows that he was not aware of the acts or circumstances by virtue of which he became a controller of the description in question or partner; but in such a case he shall be guilty of the offence if he fails to give the Commission notice in writing of the fact that he has become a controller of

the description in question or partner within a period of 14 days immediately following the day on which he becomes so aware.

Restrictions on sale of shares.

17. (1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of section 14(1) or has become or continued to be such a controller after a notice of objection has been served on him under section 14 or 15.

(2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this section applies shall, until further notice, be subject to all or any of the following restrictions –

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them, shall be void,
- (b) no voting right shall be exercisable in respect of those shares,
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder,
- (d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensed fiduciary, whether in respect of capital or otherwise.

(3) The Court, on the application of the Commission, may order the sale of any specified shares to which this section applies and, if the shares are

subject to restrictions under subsection (2), that they shall cease to be subject thereto.

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under section 14 or 15 –

- (a) until the end of the period within which, under section 19, 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 dismissed or withdrawn.

(5) Where an order is made under subsection (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold pursuant to an order under subsection (3), the proceeds of sale, less the costs of the sale, shall be paid to Her Majesty's Sheriff for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order for the whole or part of the proceeds to be paid to him; and in this subsection "**Her Majesty's Sheriff**" means –

- (a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney,
- (b) where the order was made by the Court of the Seneschal, the Prévôt,
- (c) where the order was made by the Royal Court, Her

Majesty's Sheriff.

- (7) This section applies –
- (a) to all shares in the licensed fiduciary of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of that licensed fiduciary, and
 - (b) in cases where the person in question became a controller of the relevant description of a licensed fiduciary as a result of the acquisition by him or any associate of his of shares in another company, to all shares in that other company which are held by him or any associate of his and which were not so held before he became such a controller of that licensed fiduciary.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed fiduciary or company to whose shares the notice relates and, if the notice relates to shares held by an associate of that person, on that associate.

(9) A notice served on the person concerned under subsection (2) shall give particulars of the right of appeal conferred by section 19; and any direction contained in the notice may be varied by a further direction or rescinded by the Commission by notice in writing to that person.

- (10) In this section "**the Court**" means –

- (a) where the person against whom the order under subsection (3) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, the Court of Alderney or, as the case may be, the Court of the Seneschal,
- (b) in any other case, the Royal Court.

NOTE

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

[Prohibition orders

Power to make prohibition orders.

17A. (1) If it appears to the Commission, having regard to the provisions of paragraph 3 of Schedule 1, that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a licensed fiduciary, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

- (2) A prohibition order may relate to –
 - (a) any regulated activity, any specified regulated activity

or any specified description of regulated activity,

- (b) licensed fiduciaries generally or any specified class of licensed fiduciary.

(3) An individual who performs or agrees to perform any function in breach of a prohibition order is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

(4) A licensed fiduciary shall take reasonable care to ensure that none of its functions, in relation to the carrying on of a regulated activity, 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, vary or revoke it.

(6) In this section "**specified**" means specified in a prohibition order.]

NOTE

Section 17A, and the heading thereto, were inserted by the Regulation of

Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(3), with effect from 11th August, 2003.

[List of prohibition orders.]

17B. (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions 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 referred to in subsection (1).

(4) The Commission may publish –

(a) the list referred to in subsection (1), and

(b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.]

NOTE

Section 17B was inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(3), with effect from 11th August, 2003.

[Right to make representations as to prohibition orders.]

17C. (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing –

- (a) stating that the Commission is proposing to make a prohibition order against him,
- (b) stating the terms of, and the grounds for, the proposed prohibition order,
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine, and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the

public interest or in the interests of the reputation of the Bailiwick as a finance centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against any individual, it shall serve on him notice in writing of the decision –

- (a) stating the terms of, and the grounds for, the prohibition order, and
- (b) giving particulars of the right of appeal conferred by this Law.]

NOTE

Section 17C was inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(3), with effect from 11th August, 2003.

Reasons for decisions and appeals

Disclosure of reasons for decision.

18. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 19, the person upon whom the right of appeal is conferred may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the decision.

(2) Subsection (1) shall not require the Commission to specify

any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to –

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

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 19.

Rights of appeal.

- 19.** (1) A person aggrieved by a decision of the Commission –
- (a) to refuse an application by him for a fiduciary licence,
 - (b) to revoke his fiduciary licence,
 - (c) to impose, vary or rescind any condition in respect of his fiduciary licence,
 - (d) to serve a notice on him under paragraph (g) of section 3(1) disapplying the exemption contained in that paragraph in respect of him,

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- (e) not to allow the surrender of his fiduciary licence to be withdrawn under section 11(3),
- (f) to give him directions under section 12(1), 17(2) or 20(7) or to vary or rescind any direction so given,
- (g) to omit, pursuant to the provisions of section 18(2), any matter from a statement of reasons given to him,
- (h) to serve a notice on him under section 23(1), (2), (3) or (10), 24(1) or (3) or 25(1),
- (i) to refuse his application under section 38(1), or to revoke a permission granted to him under that section, or to impose, vary or rescind any condition in respect of any such permission, or
- (j) to serve a notice on him under section 39 objecting to a name,
- [(k) to make a prohibition order under section 17A prohibiting him from performing any function, any specified function or any specified description of function, or
- (l) to refuse to vary or revoke any such order under section 17A(5),]

may appeal to the Court against the decision.

- (2) Where –
- (a) a ground for a decision described in subsection (1)(a), (b) or (c) is that mentioned in section 10(3)(a), or
 - (b) the effect of a decision described in subsection (1)(c) or (f) is to require the removal of a person as director, controller, partner, manager or employee of the applicant or licensed fiduciary in question,

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

(3) A person aggrieved by a decision of the Commission to serve a notice of objection on him under section 14 or 15 may appeal to the Court against the decision.

- [(4) 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.]

(5) 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 or, as the case may be, the notice of objection,
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(6) The Commission may, where an appeal under this section has been instituted, apply to the 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 Court may –

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

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989^h.

(7) On an appeal under this section the Court may –

^h O.R.C. No. VII of 1989.

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

(8) On an appeal under this section against a decision [of the Commission] the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition or direction [or order] in question, or the variation or rescission thereof, pending the determination of the appeal.

(9) For the purposes of determining an appeal under this section against a decision described in subsection (1)(g) to omit, pursuant to section 18(2), any matter from a statement of reasons, the Court may examine the information the disclosure of which the Commission considers would be prejudicial; and the information shall not, pending the determination of the appeal, be disclosed to the appellant or any person representing him.

(10) In this section "**the Court**" means –

- (a) where the person described in subsection (1), (2) or, as the case may be, (3) –
 - (i) is an Alderney company, or
 - (ii) is not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Alderney,

the Court of Alderney,

- (b) where that person is not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Sark, the Court of the Seneschal,
- (c) in any other case, the Royal Court.

(11) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) shall lie to the Court of Appeal on a question of law.

[(12) In subsections (10) and (11) "**the Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it.]

NOTES

In section 19,

paragraph (k) and paragraph (l) of subsection (1) were inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(4), with effect from 11th August, 2003;

subsection (4) was substituted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2008, section 2(a), with effect from 28th October, 2008;

*the words in the first pair of square brackets in subsection (8) were substituted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2008, section 2(b), with effect from 28th October, 2008;*⁵

the words in the second pair of square brackets in subsection (8) were inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(5)(b), with effect from 11th August, 2003;

subsection (12) was inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Law, 2008, section 2(c), with effect from 28th October, 2008.

The following case has referred to section 19:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

The Royal Court Civil Rules, 1989 have since been revoked by the Royal Court Civil Rules, 2007, rule 91, with effect from 4th February, 2008, subject to the transitional provisions in rule 94 of the 2007 Rules.

Advertising for business, etc

Control of advertising.

20. (1) The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, 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) –

- (a) prohibit the issue of advertisements of any 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 subsection (4), a person who issues or causes to be issued, in or from within the Bailiwick or (in the case of a Bailiwick company) 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 whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under subsection (3) if he proves that –

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

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

(5) In this section a "**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,

and for the purposes of this section an "**advertisement**" includes any means of bringing such an invitation or such information to the notice of any person; and references to the issue of an advertisement shall be construed accordingly.

(6) For the purposes of this section –

- (a) an advertisement issued or caused 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 to be issued by him on every day on which he causes or permits it to be displayed or exhibited,
- (b) the issue of an advertisement 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, 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 in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Bailiwick or a sound or television broadcast transmitted principally for reception outside the Bailiwick.

(7) If the Commission considers that any fiduciary advertisement issued or proposed to be issued is misleading, the Commission may give the advertiser a direction under this section.

(8) A direction under this section may contain any or all of the following –

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

identified in the direction,

- (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified description,
- (d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner.

(9) A direction under this section –

- (a) may have immediate effect,
- (b) shall give particulars of the right of appeal conferred by section 19, and
- (c) if given orally, shall be confirmed by the Commission in writing not later than the next working day.

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

(11) A person who issues or causes 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.

NOTES

The following Regulations have been made under section 20:

Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2001.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.⁶

Notification of certain matters

Notification of change of director, etc.

21. (1) Subject to subsection (3), where any person has become or has ceased to be a director, controller, partner or manager of a licensed fiduciary, the licensed fiduciary shall give notice in writing to the Commission of the fact.

(2) 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 licensed fiduciary becomes aware of the relevant fact.

(3) The Commission may in its absolute discretion waive any requirement of subsection (1), either wholly or in part, in respect of any licensed fiduciary whose principal place of business is outside the Bailiwick.

(4) A licensed fiduciary who fails to give notice in accordance with this section is guilty of an offence.

Notification of acquisition of significant shareholding.

22. (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) For the purposes of this Law a "**significant shareholder**", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5 per cent or more but less than 15 per cent of the voting power in general meeting of that company or of any other company of which that company is a subsidiary.

(3) A person who fails to give notice in accordance with subsection (1) is guilty of an offence unless he shows that he was not aware that the facts were such as to require the giving of such notice; but in such a case he shall be guilty of the offence if he fails to give such notice within a period of 14 days immediately following the day upon which he becomes so aware.

Obtaining of information

Power to obtain information and documents.

23. (1) The Commission may, by notice in writing served on a licensed fiduciary, require him to provide the Commission –

- (a) 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 as may be specified in the notice, by a person who is an accountant or who

otherwise 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 licensed fiduciary –

- (a) require him to produce, 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 him to furnish forthwith, 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 as the officer, servant or agent may specify,

being information or documents reasonably required by the Commission for the performance of its functions.

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a licensed fiduciary, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The power conferred by this section to require a person to produce any documents includes power –

(a) if the documents are produced, to take copies of them or extracts from them and to require –

(i) that person, or

(ii) where that person is a licensed fiduciary holding a full fiduciary licence, any other person who is a present or past director, controller, partner or manager of, or is or was at any time employed by or acting as an employee of, that licensed fiduciary,

to provide an explanation of 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 his knowledge and belief, where they are.

(5) If it appears to the Commission to be desirable in the interests of the clients of a licensed fiduciary to do so, the Commission may also exercise the powers conferred by this section in relation to –

(a) any company which is or has at any relevant time been an associated company of the licensed fiduciary (where the licensed fiduciary is a company), that is to say –

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- (i) a holding company, subsidiary or related company of the licensed fiduciary,
 - (ii) a subsidiary or related company of a holding company of the licensed fiduciary,
 - (iii) a holding company of a subsidiary of the licensed fiduciary, or
 - (iv) a company in the case of which a shareholder controller of the licensed fiduciary, alone or with associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power in general meeting, or
- (b) where the licensed fiduciary is a partnership, any company of which a partner in that partnership is or has at any relevant time been a controller.

(6) For the purposes of this Law a "**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.

(7) For the purposes of this Law 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.

- (8) Where –
- (a) a company holds a qualifying capital interest in another company, and
 - (b) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20 per cent 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 in subsection (6), unless the contrary is shown; and in this subsection "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in subsection (7).

(9) The foregoing provisions of this section shall apply in relation to a former licensed fiduciary as they apply in relation to a licensed fiduciary.

(10) The Commission may, where a licensed fiduciary holds a full fiduciary licence, by notice in writing served on any person who is or is to be a director, controller, partner, manager or employee of the licensed fiduciary, require him to furnish the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(11) The Commission may, where a licensed fiduciary holds a full fiduciary licence, exercise the powers conferred by subsections (1) to (4) in relation

to –

- (a) where the licensed fiduciary is a company, any person who is a significant shareholder of the licensed fiduciary, or
- (b) where the licensed fiduciary is a partnership, any person who is a partner in the licensed fiduciary,

if the Commission considers that it is desirable to do so in the interests of the clients of that licensed fiduciary.

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

[(13) A statement made by a person in response to a requirement imposed by or under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –

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- (A) an offence under subsection (12) or section 46(1),
- (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
- (C) perjury, or
- (D) perverting the course of justice.]

(14) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(15) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(16) A requirement imposed by or under this section shall have 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 pursuant to such a requirement.

(17) A notice under subsection (1), (2), (3) or (10) shall give particulars of the right of appeal conferred by section 19.

NOTES

In section 23, subsection (13) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

The following case has referred to section 23:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13.

Investigations by inspectors.

24. (1) The Commission may, in relation to any licensed fiduciary, if it considers it desirable to do so –

- (a) in the interests of the clients of the licensed fiduciary,
or
- (b) for the protection or enhancement of the reputation of the Bailiwick,

appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on –

- (i) the nature, conduct or state of the business of the licensed fiduciary or any particular aspect of that business, or
- (ii) the ownership or control of the licensed fiduciary,

and the Commission shall give notice in writing of the appointment to the fiduciary

concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any company –

- (a) which is or has at any relevant time been an associated company of the licensed fiduciary under investigation (where the licensed fiduciary is a company), or
- (b) of which a partner in the licensed fiduciary under investigation is or has at any relevant time been a controller (where the licensed fiduciary is a partnership).

(3) An inspector may not investigate the business of a company under subsection (2) unless and until the Commission has given notice in writing to the company of the proposed investigation.

(4) A licensed fiduciary or company being investigated under subsection (1) or (2) and any person who is or has been a director, controller, manager, partner, employee, agent, banker, auditor, advocate or other legal adviser of a licensed fiduciary or company being so investigated, or who has been appointed to make a report in respect of such a licensed fiduciary or company under section 5(6) or section 23(1)(b), or who is or has been a significant shareholder in relation to such a licensed fiduciary or company –

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that licensed fiduciary or

company; and the inspector may take copies of or extracts from any documents produced to him under this paragraph,

- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that licensed fiduciary or company, and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) An inspector shall, if so required, produce evidence of his authority.

(6) A person who without reasonable excuse –

- (a) fails to comply with 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 right conferred by this section,

is guilty of an offence.

[(7) A statement made by a person in response to a requirement imposed by or under this section –

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- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under subsection (6) or section 46(1),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(8) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(9) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(10) A requirement imposed by or under this section shall have 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 pursuant to such a requirement.

(11) Subject to the provisions of subsection (12), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the licensed fiduciary 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 licensed fiduciary as a civil debt.

(12) No 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 licensed fiduciary as a civil debt where 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.

(13) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 19.

(14) The provisions of this section shall apply in relation to a former licensed fiduciary as they apply in relation to a licensed fiduciary, but only in connection with the business, ownership or control of the former licensed fiduciary at a time when it held a fiduciary licence.

NOTE

In section 24, subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Investigation of suspected offences.

25. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1, 36 or 37, the Commission may by notice in writing require that person or any other person –

- (a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence,
- (b) to attend at such place and time as may be specified in the notice and answer questions 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 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 his 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 or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

[(4) A statement made by a person in response to a requirement imposed by or under any provision of this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (ii) in proceedings for –
 - (A) an offence under subsection (3) or section 46(1),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(5) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(6) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(7) A requirement imposed by or under this section shall have 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 pursuant to such a requirement.

(8) A notice under subsection (1) shall give particulars of the

right of appeal conferred by section 19.

NOTE

In section 25, subsection (4) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Power of Bailiff to grant warrant.

26. (1) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath –

- (a) that a notice has been served under section 23 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 section 23, 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 section 23, 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 27.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 24 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

- (a) that an offence under this Law 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,
- (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 27.

(3) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 1, 36 or 37 and that –

- (a) a person has failed to comply with any requirement of a notice under section 25(1) or any other requirement imposed by or under section 25,
- (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 section 25(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 27.

- (4) In this section the expression "**Bailiff**" means –
- (a) where the warrant is to be executed in Alderney, the Chairman or a Jurat of the Court of Alderney,
 - (b) where the warrant is to be executed in Sark, the Seneschal or his deputy,
 - (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué.

Powers conferred by Bailiff's warrant.

27. (1) A warrant granted under section 26(1) shall authorise 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 section 23 was or could be served,
 - (ii) upon which the documents to which the notice under section 23 relates are reasonably

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believed to be, or

- (iii) where no notice under section 23 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 section 23, or

- (ii) where no notice under section 23 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 23,

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 –

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- (i) to answer any questions which could have been put to him under section 23,
- (ii) to state to the best of his 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 section 26(2) shall authorise 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 licensed fiduciary or other person being investigated by inspectors under section 24, or
 - (ii) upon which any documents to which the investigation under section 24 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 section 24, to take possession

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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 relevant to the investigation under section 24,
 - (ii) to state to the best of his 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 section 26(3) shall authorise 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 section 25(1) was served,
 - (ii) upon which there are reasonably believed to be the documents to which the notice under

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section 25(1) relates, or

- (iii) where no notice under section 25(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 under section 1, 36 or 37, 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 relevant for determining whether he or any other person has committed an offence under section 1, 36 or 37,
 - (ii) to state to the best of his 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 section 26 shall cease to be valid on the expiration 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 section 26 may be retained –

(a) for a period of three months or such longer period as the Bailiff 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 or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 26 is guilty of an offence.

[(7) A statement made by a person in response to a requirement imposed under a warrant granted under section 26 –

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

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

(i) where evidence relating to it is adduced, or a

question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under subsection (6) or 46(1),

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

(C) perjury, or

(D) perverting the course of justice.]

(8) Nothing in a warrant granted under section 26 shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(9) Where a person claims a lien on a document its production under a warrant granted under section 26 shall be without prejudice to his lien.

(10) A requirement imposed under a warrant granted under section 26 shall have 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 pursuant to such a requirement.

NOTE

In section 27, subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Falsification, etc, of documents during investigation.

28. A person –

- (a) upon whom a notice under section 23 or 25 has been served or who knows or has reasonable grounds to suspect –
 - (i) that such a notice is likely to be served on him, or
 - (ii) that an inquiry or investigation is being or is likely to be carried out under section 23, 24 or 25, and
- (b) who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect –
 - (i) are or would be specified in such a notice, or

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- (ii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless he proves that he 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.

Accounts and auditors

Rules as to accounts.

- 29.** (1) The Commission may make rules prescribing –
- (a) the form in which –
 - (i) a licensed fiduciary's accounts, and
 - (ii) where the licence held is a full fiduciary licence, the auditor's report on those accounts,are to be,
 - (b) the information and particulars to be contained in them, being, where the licence held is a personal fiduciary licence, information and particulars relating only to the carrying on by the licensed fiduciary, by way of business, of regulated activities, and
 - (c) the times or intervals at which they are to be drawn up and furnished,

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 as may be prescribed by the rules.

(2) Without prejudice to the provisions of rules under subsection (1), a licensed fiduciary shall furnish to the Commission upon request any accounts and reports required to be kept under the rules.

(3) The Commission may in its absolute discretion waive, either wholly or in part, any requirement of any rules under subsection (1) and instead require the licensed fiduciary to furnish to the Commission upon request an abridged version of the accounts or reports required to be kept under the rules in such form and containing such information and particulars as the Commission may require.

(4) A licensed fiduciary 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,

is guilty of an offence.

NOTE

The following Rules have been made under section 29:

Regulation of Fiduciaries (Accounts) Rules, 2001;
Regulation of Fiduciaries (Accounts) (Amendment) Rules, 2010.

Notification in respect of auditors.

30. (1) A licensed fiduciary which is a company shall forthwith give notice in writing and explanation to the Commission –

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

(2) An auditor of a licensed fiduciary appointed under or in accordance with any requirement imposed by or under any enactment in force in the Bailiwick or any part thereof, including this Law, shall forthwith give notice in writing and explanation to the Commission if he –

- (a) resigns before, or does not seek re-appointment upon, the expiration of his term of office, or
- (b) decides to include any qualification as to any matter in his report on the accounts of the licensed fiduciary.

(3) The provisions of this section shall 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 (4), for a period of three years from the date on which the former licensed fiduciary ceased to hold a fiduciary licence.

(4) Where an auditor of a former licensed fiduciary appointed as mentioned in subsection (2) –

- (a) resigns before, or does not seek re-appointment upon, the expiration of his term of office, or
- (b) decides to include any qualification as to any matter in his report on the accounts of the former licensed fiduciary,

by reason of any fraud of –

- (i) the former licensed fiduciary, or
- (ii) any of its directors, managers, controllers, partners or employees,

perpetrated at a time when it held a fiduciary licence, the time limit of three years specified in subsection (3) shall not apply.

(5) A licensed fiduciary, former licensed fiduciary or auditor who contravenes this section is guilty of an offence.

Communications to Commission by auditors, etc.

31. (1) No duty to which –

- (a) an auditor of a licensed fiduciary, or
- (b) a person appointed to make a report under section 5(6)

or 23(1)(b),

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

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

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

(3) In relation to a person appointed to make a report under section 5(6) or 23(1)(b), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which –

- (a) relates to the business or affairs of the person or body in relation to which his report is made or –
 - (i) where that person or body is a company, any associated company thereof, or

- (ii) where that person or body is a partnership, any company of which a partner in that partnership is a controller,
- (b) if his report relates to an associated company of a company, relates to the business or affairs of that second-mentioned company.

(4) If it appears to the Commission, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, that any accountants or class thereof to whom subsection (1) applies 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 that subsection, 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 and licensed fiduciaries, by regulation specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it shall be the duty of any accountant to whom the regulations apply to communicate a matter to the Commission in the circumstances specified in the regulations.

(5) 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.

NOTE

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee

and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.⁷

[Making of Rules

Rules of the Commission.

31A. The Commission may make rules in relation to the carrying on of regulated activities by licensed fiduciaries and generally as to the manner in which licensed fiduciaries conduct, or hold themselves out as conducting, their business.]

NOTES

Section 31A, and the cross-heading thereto, were inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

The following Rules have been made under section 31A:

Retirement Annuity Trust Schemes Rules, 2010.

[Particular matters that may be covered by rules.

31B. Rules under section 31A 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 9),
- (b) prescribe the manner in which licensed fiduciaries must conduct, govern, manage and operate their business (and this includes, without limitation, matters

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relating to corporate governance, internal controls and reporting, the holding of client assets, financial resources, the calculation of technical provisions and capital requirements),

- (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,

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- (f) control the relationship between licensed fiduciaries and their servants and agents and, without limitation, require licensed fiduciaries to impose and enforce restrictions on the activities carried on by their servants and agents,
- (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, and
- (m) make provision as to the dealings and relationship of licensed fiduciaries with other licensed fiduciaries, other persons carrying on regulated activities, clients and the Commission.]

NOTE

Section 31B was inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

[General provisions as to rules

Making, publication and effect of contravention of rules.

31C. (1) Before making any rules under this Part of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or potential clients, publish proposals for the rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.

(2) Rules under this Part of this Law shall be made by an instrument in writing which shall –

- (a) specify the provisions of this Law under which the rules are made, and
- (b) be made available to the public in such manner, and on such terms as to payment or otherwise, as the Commission considers appropriate.

(3) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a rule under section 31A does not of itself render him liable to any proceedings, but –

- (a) the Commission, in the exercise of its powers conferred by or under –

(i) this Law or any Ordinance, regulation or rule made under it, or

(ii) the regulatory Laws,

may take the rule and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings (criminal or otherwise), whether or not under 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.]

NOTE

Section 31C, and the cross-heading thereto, were inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

Miscellaneous powers of Commission

Repayment of monies from unauthorised business.

32. (1) If on the application of the Commission it appears to the Court that a person has carried on by way of business any regulated activity in contravention of this Law, the Court may –

- (a) order him and any other person who appears to the Court to have been knowingly concerned in the contravention, forthwith or at such time as the Court may direct, to repay monies accepted from, or paid over (whether to him or to any other person) by, clients in the course of his so carrying on that regulated activity, or
- (b) appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover those monies.

(2) If on the application of the Commission it appears to the Court that profits have accrued to a person as a result of any regulated activity having been carried on by way of business in contravention of this Law, the Court may order him to pay to Her Majesty's Sheriff, or may appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover from him, such sum as appears to the Court to be just having regard to the profits appearing to the Court to have accrued to him.

(3) In deciding whether and on what terms to make an order under this section the 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 his ability to carry on his business in a manner satisfactory to his creditors.

(4) Any amount paid to Her Majesty's Sheriff or recovered by a receiver pursuant to subsection (2) shall be distributed among such persons as the Court may direct, being –

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- (a) persons appearing to the Court to have been the clients in respect of whom the regulated activity as a result of which the profits accrued was carried on, or
- (b) such other persons as the Court thinks just.

(5) On an application under subsection (2) the Court may require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what profits have accrued to him as mentioned in that subsection and for determining how any amounts are to be distributed under subsection (4); and the Court may require any such accounts or information to be verified in such manner as it may direct.

(6) In this section "**the Court**" means –

- (a) where the person against whom the order under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, the Court of Alderney or, as the case may be, the Court of the Seneschal,
- (b) in any other case, the Royal Court.

(7) In this section "**Her Majesty's Sheriff**" means –

- (a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney,
- (b) where the order was made by the Court of the Seneschal, the Prévôt,

- (c) where the order was made by the Royal Court, Her Majesty's Sheriff.

NOTE

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

Injunctions to restrain unlawful business, etc.

33. (1) If on the application of the Commission the Court is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene section 1, 36, 37 or 40, a direction under section 12, 17 or 20 or a regulation under section 20, or
- (b) a person may have been guilty of such a contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have been guilty of a contravention mentioned in subsection (1)(a), the Court may grant an injunction restraining him or any of his associates or

controllers 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 may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the 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 by the Commission for an injunction under this section may, with the approval of the Court, and on such terms as the Court may direct, be made *ex parte*.

(5) In this section "**the Court**" means –

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, the Court of Alderney or, as the case may be, the Court of the Seneschal,

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

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law

Reform (Miscellaneous Provisions) (Guernsey) Law, 1987ⁱ; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

NOTE

The following case has referred to section 33:

Guernsey Financial Services Commission v. Claridges Trustees Limited, Claridges Trust Company (Guernsey) Limited, First Nominees Limited and Second Nominees Limited 2007–08 GLR N-19.

Winding-up on application of Commission.

34. The Royal Court or, in the case of an Alderney company, the Court of Alderney, on the application of the Commission under this section, may order the winding-up of a Bailiwick company –

- (a) which is a licensed fiduciary or former licensed fiduciary, or
- (b) whether licensed or not, which is guilty of any such contravention as is described in section 33(1)(a),

in cases where –

- (i) the company is unable to pay its debts within the meaning of section 95 of the Companies (Guernsey) Law, 1994^j or, in the case of an

ⁱ Ordres en Conseil Vol. XXX, p. 145.

^j Order in Council No. XXXIII of 1994; No. XIV of 1996.

Alderney company, section 126 of the Companies (Alderney) Law, 1994^k,

- (ii) the company has defaulted in an obligation to pay any sum due and payable in respect of or pursuant to the carrying on by the company, by way of business, of a regulated activity, or
- (iii) the Royal Court or, in the case of an Alderney company, the Court of Alderney is of the opinion that it is just and equitable that the company should be wound up,

and where such an order is made, the provisions of the Companies (Guernsey) Law, 1994 or, in the case of an Alderney company, the Companies (Alderney) Law, 1994 shall apply accordingly.

NOTES

The following case has referred to section 34:

Guernsey Financial Services Commission v. Claridges Trustees Limited, Claridges Trust Company (Guernsey) Limited, First Nominees Limited and Second Nominees Limited 2007–08 GLR N-19.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

^k Order in Council No. XXXIV of 1994.

Codes of practice.

35. (1) The Commission, after consultation with –
- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, and
 - (b) such other persons as appear to the Commission to be appropriate including, without limitation, persons representative of that part of the Bailiwick's financial services industry which carries on regulated activities,

may issue such codes of practice as the Commission thinks necessary –

- (i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and best practices to be observed by persons carrying on by way of business any regulated activity,
- (ii) generally for the purposes of this Law.

(2) A code of practice under this section may contain such transitional or savings provisions as appear to the Commission to be necessary or expedient.

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

(4) A contravention by any person of a provision of a code of practice under this section shall not of itself render him liable to any proceedings; but –

(a) the Commission, in the exercise of its powers conferred by or under –

(i) this Law or any Ordinance, regulation or rule made under it, or

(ii) the regulatory Laws,

may take the provision of the code and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings, whether or not under this Law, the provision of the code shall be admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

NOTE

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.⁸

PART II

**HOLDING OUT, OFFERING TO CARRY ON BUSINESS,
DESCRIPTIONS & NAMES**

Restrictions on use of certain descriptions and names.

- 36.** (1) No person other than –
- (a) a licensed fiduciary, or
 - (b) a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission,

shall so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language) that he is a licensed fiduciary or –

- (i) in the case of a person other than a Bailiwick company, that he is carrying on by way of business, in or from within the Bailiwick, any regulated activities,

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- (ii) in the case of a Bailiwick company, that it is carrying on by way of business, in or from within any place whatsoever, any regulated activities.

(2) No person other than –

- (a) a licensed fiduciary, or
- (b) a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission,

shall use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that he is a licensed fiduciary or –

- (i) in the case of a person other than a Bailiwick company, that he is carrying on by way of business, in or from within the Bailiwick, any regulated activities,
- (ii) in the case of a Bailiwick company, that it is carrying on by way of business, in or from within any place whatsoever, any regulated activities.

(3) No person other than a Bailiwick company shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed fiduciary to carry on by way of business, in or from within the Bailiwick, any

regulated activities.

(4) No Bailiwick company shall falsely state, or do anything which falsely indicates, that it is entitled although not a licensed fiduciary to carry on by way of business, in or from within any place whatsoever, any regulated activities.

(5) A person who contravenes any provision of this section is guilty of an offence.

Offering to carry on business.

37. (1) No person, other than a Bailiwick company or a licensed fiduciary, shall offer to carry on, or hold himself out as being willing to carry on, by way of business, in or from within the Bailiwick, any regulated activities.

(2) No Bailiwick company other than a licensed fiduciary shall 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.

(3) A person who contravenes any provision of this section is guilty of an offence.

Permission to use certain descriptions or names.

38. (1) A person wishing to obtain permission for the purposes of section 36 shall apply in that behalf to the Commission.

(2) An application under subsection (1) shall be made in such form and manner and shall be accompanied by such information and documents as the Commission may require and by such fee as may be prescribed by regulations of the Commission made after consultation with the Committee, the Policy and

Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark; and 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.

(3) The Commission may, upon receipt of an application under subsection (1), grant the application unconditionally or subject to such conditions as it may consider necessary or expedient, or refuse the application.

(4) Where the Commission decides –

- (a) to refuse an application under subsection (1),
- (b) to revoke a permission granted under that subsection,
or
- (c) to impose, vary or rescind any condition in respect of any such permission,

it shall give written notice of that decision to the applicant setting out particulars of the right of appeal conferred by section 19.

NOTES

The following Regulations have been made under section 38:

Financial Services Commission (Fees) Regulations, 2010.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark

*General Purposes and Advisory Committee.*⁹

Commission may object to certain names.

39. (1) An applicant for a fiduciary licence 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 it, object to that name.

(2) A licensed fiduciary which proposes to change its name or any name it uses for the purposes of or in connection with any business carried on by it, or to use a name for the purposes of or in connection with any business carried on by it, shall give notice in writing to the Commission of the proposed name and the Commission may, within a period of 28 days immediately following the receipt by it of such notice, by notice in writing served upon the licensed fiduciary object to the proposed name.

(3) The Commission may also give notice 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 misleading to the public or otherwise undesirable.

(5) For the purposes of this section the whole of the name in question shall be taken into account in deciding whether it is misleading or undesirable.

(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.

(7) A notice to be given to the Commission under this section shall be given in such manner and form as the Commission may specify and shall be accompanied by such information and documents as the Commission may require.

(8) A notice of objection under this section shall give particulars of the right of appeal conferred by section 19.

Offences in relation to objections to names.

40. (1) Where the Commission gives notice objecting to a name under section 39, 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 by him after the notice takes effect.

(2) A notice of objection –

(a) under section 39(1), (2) or (3), may take immediate effect,

(b) under section 39(6), takes effect at the end of the period within which, under section 19, an appeal can be brought or, if an appeal is brought within that period, when the appeal is determined or withdrawn.

(3) A person who contravenes any provision of this section is guilty of an offence.

Incorporation and change of name of companies.

- 41.** (1) Without prejudice to the provisions of any other enactment –
- (a) no application under the Companies (Guernsey) Law, 1994^l or the Companies (Alderney) Law, 1994^m to the Royal Court or (as the case may be) the Registrar for the registration of the memorandum of a company in the proposed name of which there appears the word trust, trustee, fiduciary, executor, nominee 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 38 and any conditions subject to which that permission was granted have, so far as practicable, been complied with,
 - (b) no application under the Companies (Guernsey) Law, 1994 or the Companies (Alderney) Law, 1994 to the Royal Court or (as the case may be) the Court of Alderney for an order confirming a change of company name by the inclusion (whether in English or any other language) of the word trust, trustee, fiduciary, executor, nominee or any cognate

^l Order in Council No. XXXIII of 1994; No. XIV of 1996.

^m Order in Council No. XXXIV of 1994.

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expression shall be granted unless the applicant establishes that –

- (i) it is a licensed fiduciary, or
 - (ii) it has obtained the permission of the Commission in that behalf under section 38 and any conditions subject to which that permission was granted have, so far as practicable, been complied with,
- (c) no such application for the registration of the memorandum of a company or for an order confirming a change of company name shall be granted where a notice of objection under section 39 is in force in respect of the proposed name.

(2) The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, by regulation amend subsection (1) by adding any word to, or removing any word from, the list of words the use of which in the name or proposed name of a company is for the time being regulated by that subsection.

NOTES

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.¹⁰

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Applications by Commission for change of company name.

42. (1) Where a Bailiwick company other than –

- (a) a licensed fiduciary, or
- (b) a company which has first obtained the permission of the Commission in that behalf under section 38 and which is acting in accordance with the conditions of that permission,

has a company name which indicates or may reasonably be understood to indicate (whether in English or any other language) that it is a licensed fiduciary or that it is carrying on by way of business, in or from within any place whatsoever, any regulated activities, the Royal Court or, in the case of an Alderney company, the Court of Alderney may, on the application of the Commission, direct the company to change its name within such period and subject to such penalty as the Royal Court or (as the case may be) the Court of Alderney may direct.

(2) Where a Bailiwick company other than –

- (a) a licensed fiduciary, or

- (b) a company which has first obtained the permission of the Commission in that behalf under section 38 and which is acting in accordance with the conditions of that permission,

applies to the Royal Court or, in the case of an Alderney company, to the Court of Alderney for an order confirming a change of company name to a name which indicates or may reasonably be understood to indicate (whether in English or any other language) that the company is a licensed fiduciary or that it is carrying on by way of business, in or from within any place whatsoever, any regulated activities, the Royal Court or (as the case may be) the Court of Alderney may refuse the application.

(3) A company which fails to comply with any provision of a direction under subsection (1) is, without prejudice to any penalty specified in the direction –

- (a) guilty of an offence, and
- (b) liable to be wound up on the application of the Commission under section 94 of the Companies (Guernsey) Law, 1994ⁿ or, in the case of an Alderney company, section 125 of the Companies (Alderney) Law, 1994^o.

(4) The provisions of this section are without prejudice to the provisions of any other enactment.

ⁿ Order in Council No. XXXIII of 1994; No. XIV of 1996.

^o Order in Council No. XXXIV of 1994.

NOTE

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

PART III

DISCLOSURE OF INFORMATION

Restrictions on disclosure of information.

- 43.** (1) Subject to the provisions of section 44 –
- (a) no person who under or for the purposes of this Law receives information relating to the business or other 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.

44. Section 43 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 the Commission to discharge its functions conferred by or under this Law,
 - (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 discharge its functions conferred by or under this Law or would otherwise be in the interest of the public,
 - (d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, 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

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the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,

- (e) the disclosure by the Commission of information in the interests of clients or in the public interest,
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a place outside the Bailiwick to exercise 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 this Law or any Ordinance, regulation or rule made under it,
- (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 this Law or otherwise,

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- (i) the disclosure of information in connection with any other proceedings arising out of this Law,
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of a licensed fiduciary or former licensed fiduciary or by an accountant or other person nominated or approved for the purposes of section 5(6) or 23(1)(b) or appointed under section 24,
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under sections 23 to 27 or 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 body 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 discharge 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 section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^P.

Information supplied by relevant overseas authority.

45. (1) Section 43 applies also in relation to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority in a place outside the Bailiwick.

(2) Information described in subsection (1) may be disclosed only –

- (a) with the consent of the persons whose consent is referred to in section 43(1), or
- (b) for the purposes or in the circumstances described in

^P Ordres en Conseil Vol. XXX, p. 243; section 21(2) was amended by Order in Council No. II of 1997.

section 44(a), (b) or (h)[, or

- (c) with the consent of the relevant supervisory authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of section 44.]

NOTE

In section 45, paragraph (c) of subsection (2), and the word immediately after paragraph (b) thereof, were inserted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(6), with effect from 11th August, 2003.

PART IV

OFFENCES AND PENALTIES

False or misleading information.

- 46.** (1) A person who –
- (a) in connection with an application for a fiduciary licence under this Law,
 - (b) in purported compliance with a requirement imposed by or under any provision of this Law or of any Ordinance, regulation or rule made under it, or
 - (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement,

information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Law –

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

is guilty of an offence.

(2) A licensed fiduciary which fails to provide the Commission with any information in its possession knowing or having reasonable cause to

believe –

- (a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation to the licensed fiduciary, and
- (b) 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 exercise of those functions in relation to the licensed fiduciary,

is guilty of an offence.

Penalties.

47. (1) A person guilty of an offence under section 1(3), 20(11), 23(12), 24(6), 25(3), 27(6), 28, 36(5), 37(3), 40(3), 43(2) or 46(1) is liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

(2) A person guilty of an offence –

- (a) under section 21(4), 22(3), 29(4) or 30(5) is liable on summary conviction to a fine not exceeding level 5 on

the uniform scale,

- (b) under section 9(5), 12(5), 16, 20(3), 42(3)(a) or 46(2) is liable on conviction to a fine.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(a) and (2)(a) shall be applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987^q and section 23 of the Reform (Sark) Law, 1951^r.

(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.

NOTES

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.

Criminal liability of directors, abettors, etc.

^q Ordres en Conseil Vol. XXX, p. 37; section 13 was amended by Orders in Council No. VI of 1989 and No. IX of 1995.

^r Ordres en Conseil Vol. XV, p. 215; section 23 was substituted by Vol. XXIII, p. 200 and amended by Vol. XXIX, p. 27 and Orders in Council No. VII of 1989 and No. XII of 1991.

48. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, controller, manager, secretary or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

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

(3) Without prejudice to the generality of subsection (1), a person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law may be proceeded against and punished as a principal offender.

Criminal proceedings against unincorporated bodies.

49. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members and, for the purposes of such proceedings, the service of any document (including any summons) on that body shall be carried out in accordance with the provisions of section 53.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Law, or any Ordinance, regulation or rule made under it, shall be paid from the funds of that body.

(3) Where an offence under this Law, or any Ordinance,

regulation or rule made under it, 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 a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing 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.

Defence of due diligence.

50. In any proceedings for an offence under this Law it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

Jurisdiction.

51. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under this Law (or any Ordinance, regulation or rule made under it) 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
MISCELLANEOUS AND SUPPLEMENTARY

Verification of information.

52. The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement imposed by or under any provision of this Law or of any Ordinance, regulation or rule under it shall be verified in such manner as the Commission may reasonably specify; and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been provided in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

Service of notices.

53. (1) Any document other than a summons to be given or served under this Law may be given to or served upon –

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

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registered office or principal or last known principal place of business outside the Bailiwick,

- (d) an unincorporated body, by being given to or served on any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Committee, by being left at, or sent by post or transmitted to, its principal office in the Bailiwick,
- (f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick,

and in this section –

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post, and
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication; in which event the

document shall be regarded as served when it is received.

(2) If a person notifies the Commission of an address for service within the Bailiwick for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document 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 subsections (1) to (4) 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 the Commission or its Chairman under 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 this Law is an infant or person under guardianship, the notice or document shall be served on his guardian; and if there is no guardian, the Commission may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law; and in this subsection "**the Court**" means –

- (a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, the Court of Alderney or, as the case may be, the Court of the

Seneschal,

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

(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 non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended^s.

(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.

NOTES

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect

^s Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Evidence.

54. (1) In any proceedings, a certificate purporting to be signed on behalf of the Commission and certifying –

- (a) that a particular person or body is or is not a licensed fiduciary or was or was not a licensed fiduciary at a particular time,
- (b) the date on which a particular person or body obtained or ceased to hold a fiduciary licence,
- (c) the terms of any conditions imposed in respect of a particular person's or body's fiduciary licence,

shall be 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.

General provisions as to receivers.

55. (1) Where the Court has appointed a receiver under section 32 or 33, the Court may, on the application of the receiver or of any other person appearing to the 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 Court.

(2) Where a receiver appointed under section 32 or 33 takes any action –

(a) in relation to property which is not property in respect of which he was appointed, being action which he would be entitled to take if it were such property, or

(b) in relation to property which is property in respect of which he was appointed, being action which he is not entitled to take,

and, in either case, believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(3) In this section "**the Court**" means –

(a) where the person against whom the direction under subsection (1) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, the Court of Alderney or, as the case may be, the Court of

the Seneschal,

- (b) in any other case, the Royal Court.

Regulations as to annual return.

56. (1) The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, make regulations requiring the submission by licensed fiduciaries to the Commission, at such times 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 Committee to be necessary for the purposes of –

- (a) enabling the Commission to perform its functions under this Law or any Ordinance, regulation or rule under it,
 - (b) responding to the obligations of the Bailiwick in relation to international co-operation and mutual assistance,
 - (c) the protection of the public and the interests of clients of licensed fiduciaries, and
 - (d) the protection or enhancement of the reputation of the Bailiwick.
- (3) Information and documents submitted pursuant to regulations

under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require.

(4) Without prejudice to the generality of the foregoing, the information and documents that regulations under this section may require to be submitted to the Commission include –

- (a) audited accounts and auditors' management letters,
- (b) the names of directors, controllers, managers, partners and employees,
- (c) the number of staff employed,
- (d) the number of clients, whether in total or whether in respect of different descriptions of regulated activity,
- (e) the licensed fiduciary's estimate of the value of liquid assets under administration.

(5) Without prejudice to the generality of the foregoing, regulations under this section may make provision in relation to –

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

regulations,

- (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 regulations,
- (d) the provision of reports, in such form as may be specified by the regulations or by the Commission, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,
- (e) the fees to be payable to the Commission on the submission of annual returns,
- (f) the sanctions, penalties and remedies for contraventions of the regulations, including the creation, trial and punishment of offences, provided that regulations under this section may not specify criminal penalties which exceed those for the time being specified by section 47(2),
- (g) the service of notices.

(6) In this section the expression "**prescribed**" means prescribed by regulations under this section.

NOTES

The following Regulations have been made under section 56:

Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2001.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.¹¹

Limitation of liability.

57. No liability shall be incurred by, or by any Committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or by the Commission, or 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 this Law, or any Ordinance, regulation or rule under it, unless the thing was done or omitted to be done in bad faith.

Interpretation.

58. (1) In this Law, unless the context otherwise requires –

"**accountant**" means a person who is qualified for appointment as an auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994^t,

"**actuary**" means a member of the Institute of Actuaries for England and Wales or the Faculty of Actuaries for Scotland,

^t Order in Council No. XXXIII of 1994; No. XIV of 1996.

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

"Alderney" means the Island of Alderney and its dependencies,

"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^u,

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

- (a) the spouse, child or stepchild of that person,
- (b) any company of which that person is a director,
- (c) any person who is an employee or partner of that person,
- (d) if that person is a company –
 - (i) any director or subsidiary of that company, and
 - (ii) any director or employee of any such subsidiary, and
- (e) 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

^u Order in Council No. XXXIV of 1994.

under which they undertake to act together in exercising their voting power in relation to a company, that other person,

"**associated company**", in relation to a company, shall be construed in accordance with section 23(5)(a),

"**auditor**" means, in sections 29(1) and 56(4), a person who is qualified for appointment as an auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994^v and who is approved by the Commission to audit the accounts of licensed fiduciaries,

"**Bailiff**" has the meaning given by section 26(4),

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

"**Bailiwick company**" means a Guernsey company or an Alderney company,

"**by way of business**" shall be construed in accordance with subsection (3),

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

"**chief executive**", in relation to a company, means a person who,

^v Order in Council No. XXXIII of 1994; No. XIV of 1996.

alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the company and, in relation to a company 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,

"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,
- (b) his children, stepchildren, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters, and
- (c) the spouse of any person within paragraph (b),

"Commission" means the Guernsey Financial Services Commission

established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^w,

"Committee" means the States of Guernsey [Policy Council],

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

"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, and cognate expressions shall be construed accordingly,

"controller", in relation to a company, means –

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller,

"Court", in sections 8, 17, 19, 32, 33, 53 and 55, has the meanings respectively given by sections 8(6), 17(10), 19(10), 32(6), 33(5), 53(6) and 55(3),

^w Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1987; and No. I of 1998.

"director" includes any person who occupies the position of director by whatever name called and, in relation to an unincorporated body, any member of the committee or other similar governing body,

"documents" includes information recorded in any form (including, without limitation, in an electronic communication) and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"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, and cognate expressions shall be construed accordingly,

"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 company, 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 company to comply with the requirements of the Companies (Guernsey) Law, 1994, the Companies (Alderney) Law, 1994 or any corresponding legislation in force in any place outside the Bailiwick,

"fiduciary licence" means a full fiduciary licence or personal fiduciary licence granted by the Commission under section 6,

"former licensed fiduciary" means a person who –

- (a) does not hold and is not deemed to hold a fiduciary licence, but
- (b) has previously held such a licence,

"full fiduciary licence" has the meaning given by section 4,

"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,

"Guernsey company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994^x,

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

"holding company" has the meaning given in Schedule 2, subject to any regulations under paragraph 5 of that Schedule,

"indirect controller", in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act,

"inspector" means a person appointed by the Commission under

^x Order in Council No. XXXIII of 1994; No. XIV of 1996.

section 24(1),

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

- (a) the transmission over a telecommunications system of information (including, without limitation, anything falling within paragraphs (a) to (d) of the definition of the expression **"telecommunications system"**) provided by another person, or
- (b) the provision of access to a telecommunications system,

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

"licensed fiduciary" means a person who holds a fiduciary licence,

"limited partner" means a person described in paragraph (b)(ii) of the definition of the expression **"limited partnership"**,

"limited partnership" means –

- (a) an arrangement 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^y, or

- (b) an arrangement entered into under the laws of a place outside the Bailiwick 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,

"**manager**", in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief

^y Order in Council No. XII of 1995; and No. V of 1996.

executive of the company –

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the company,

"officer of police" means a member of the salaried police force of the Island of Guernsey and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^z,
- (c) in relation to Sark, the Constable and the Vingtenier, [and
- (d) includes an officer within the meaning of section 1(1)

^z Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1998; and No. I of 2000; section 15 has been prospectively repealed and replaced by the Government of Alderney (Amendment) Law, 2000.

of the Customs and Excise (General Provisions)
(Bailiwick of Guernsey) Law, 1972,]

"partnership" has the meaning given by section 1 of the Partnership
(Guernsey) Law, 1995^{aa}, and cognate expressions shall be construed
accordingly,

"pension scheme" means a scheme which –

- (a) is bona fide established as a trust,
- (b) is established in connection with the carrying on of
business or the exercise of functions,
- (c) has for its sole or main purpose the provision of
retirement or other benefits –
 - (i) for persons employed in connection with such
business or functions, on their retiring at an
age specified in the rules of the scheme or on
their becoming incapacitated at some earlier
age,
 - (ii) for the widows, children or dependants of
persons who are or have been so employed, on
the death of those persons,

"personal fiduciary licence" has the meaning given by section 4,

^{aa} Order in Council No. VIII of 1995.

"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,

"qualifying capital interest" has the meaning given by section 23(7),

"regulated activity" has the meaning given in section 2 as that section has effect from time to time,

"regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987^{bb},
- (b) the Insurance Business (Guernsey) Law, 1986^{cc},
- (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^{dd}, and
- [(ca) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,
- (cb) the Insurance Business (Bailiwick of Guernsey) Law, 2002,

bb Ordres en Conseil Vol. XXX, p. 281.

cc Ordres en Conseil Vol. XXIX, p. 214; No. II of 1998.

dd Order in Council No. XIII of 1994.

- (cc) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (cd) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,]
- (d) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Committee made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark,

"related company" has the meaning given by section 23(6),

"relevant supervisory authority", in relation to a place outside the Bailiwick, means an authority discharging in that place –

- (a) functions corresponding to any functions of the Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^{ee} or under the regulatory Laws, or
- (b) such other functions as the Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the

^{ee} Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1987; and No. I of 1998.

States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, by regulation prescribe,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"Sark" means the Island of Sark and its dependencies,

"shareholder controller", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

"significant shareholder" has the meaning given in section 22(2),

"subsidiary company" has the meaning given in Schedule 2, subject to any regulations under paragraph 5 of that Schedule; and **"subsidiary"** has the same meaning,

"supervised company" is –

- (a) a company –
 - (i) which holds a licence to carry on controlled investment business under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^{ff} or which is exempt from licensing under section 29 of that Law,

^{ff} Ordres en Conseil Vol. XXX, p. 281.

- (ii) which holds an authorisation under section 8 of that Law, or
 - (iii) which is a closed-ended investment company within the meaning of paragraph 2(2) of Schedule 1 to that Law and for the issue of the shares of which the Committee has granted its consent under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959^{gg},
- (b) a company which is registered as an insurer by the Commission under the Insurance Business (Guernsey) Law, 1986^{hh} or which is exempt from such registration by virtue of section 8 of that Law,
- (c) a company which is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994ⁱⁱ, or
- (d) a company which is of any other class or description prescribed for the purposes of this section by regulations of the Committee made after consultation with the Commission and with the agreement of the

^{gg} Recueil d'Ordonnances Tome XII, p. 105; Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; No. XXVIII of 1989; and Order in Council No. XII of 1995.

^{hh} Ordres en Conseil Vol. XXIX, p. 214.

ⁱⁱ Order in Council No. XIII of 1994.

Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark,

"telecommunications system" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of –

- (a) speech, music and other sounds,
- (b) visual images,
- (c) 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
- (d) signals serving for the actuation or control of machinery or apparatus,

"trust" means the legal relationship that exists (by whatever name) where a person (the **"trustee"**) holds or has vested in him or is deemed to hold or have vested in him any property which does not form, or which has ceased to form, part of his 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**" shall include 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.

(2) Unless the context otherwise requires, references in this Law to the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory 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 this Law on the said Policy and Finance Committee or (as the case may be) the said [General Purposes and Advisory Committee].

(3) For the purposes of this Law a person who carries on any activity shall be deemed to do so by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so.

(4) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(5) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

(6) The Interpretation (Guernsey) Law, 1948^{jj} applies to the interpretation of this Law throughout the Bailiwick.

^{jj} Ordres en Conseil Vol. XIII, p. 355.

NOTES

In section 58,

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words in square brackets in paragraph (b) of the definition of the expression "officer of police" in subsection (1) were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002;

paragraph (d) of the definition of the expression "officer of police", and the word immediately after paragraph (c) thereof, in subsection (1) were substituted by the Disclosure (Bailiwick of Guernsey) Law, 2007, section 12, with effect from 17th December, 2007;

paragraph (ca), paragraph (cb), paragraph (cc) and paragraph (cd) of the definition of the expression "regulatory Laws" in subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010, regulation 6(2), with effect from 3rd September, 2010.

The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The following Regulations have been made under section 58:

Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010 (in Guernsey and Alderney but not in Sark), the reference in this section to "parents" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, fathers or mothers who have parental responsibility in respect of the child.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.¹²

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Insurance Business (Guernsey) Law, 1986 has since been repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002, subject to the savings in, first, section 102 of the 2002 Law and, second, section 78 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

Transitional provisions.

59. (1) Where, immediately before the commencement of this Law –
- (a) a person other than a Bailiwick company was carrying on by way of business, in or from within the Bailiwick, any regulated activity, or
 - (b) a Bailiwick company was carrying on by way of

business, in or from within any place whatsoever, any regulated activity,

then that person or company –

- (i) at any time prior to the prescribed date, shall be deemed to be a licensed fiduciary, and
- (ii) on or at any time after the prescribed date, shall be deemed to be a licensed fiduciary, provided that the conditions set out in subsection (2) are satisfied in relation to that person or company,

and the provisions of this Law shall apply in relation to that person or company accordingly.

(2) The conditions referred to in subsection (1)(ii) are –

- (a) that, prior to the prescribed date, the person or company concerned has submitted an application for a fiduciary licence in accordance with the provisions of section 5, and
- (b) that, at the time in question, the application has not been finally determined,

and for the purposes of this subsection an application is finally determined when it is granted (whether or not subject to conditions) or, if it refused –

- (i) at the end of the period within which, under section 19, an appeal against the refusal can be brought, or
- (ii) if an appeal is brought within that period, when the appeal is determined or withdrawn.

(3) In this section the "**prescribed date**" means the date specified by Ordinance of the States for the purposes of this section.

NOTES

The "prescribed date" for the purposes of this section is, in accordance with the provisions of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (Commencement) Ordinance, 2001, section 2, 1st June, 2001.

The following cases have referred to section 59:

Castle Company Management L.L.C. Limited v. Guernsey Financial Services Commission [2004] GLR 13;

Guernsey Financial Services Commission v. Claridges Trustees Limited, Claridges Trust Company (Guernsey) Limited, First Nominees Limited and Second Nominees Limited 2007-08 GLR N-19.

Amendments.

60. (1) ...

(2) After section 127(1) of the Companies (Alderney) Law, 1994^{II} insert the following subsection –

"(1A) Without prejudice to the provisions of subsection (1),

^{II} Order in Council No. XXXIV of 1994.

an application for the compulsory winding up of a company on the ground specified in section 125(k) may be made to the Court by the Commission."

NOTE

In section 60, subsection (1) amended the Companies (Guernsey) Law, 1994, which Law has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

General provisions as to subordinate legislation.

61. (1) Any Ordinance, regulation or rule under this Law –

(a) may be amended or repealed by a subsequent Ordinance, regulation or rule, as the case may be, hereunder,

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision amending any provision of this Law.

(2) Any power conferred by this Law to make any Ordinance, regulation or rule 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.

Citation and commencement.

62. (1) This Law may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000.

(2) 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.

NOTE

The Law was brought into force on 1st April, 2001 by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (Commencement) Ordinance, 2001,

section 1.

[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 his activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his 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 and instructions issued from time to time under this Law and under any other enactment as may be applicable to him.

Economic benefit.

2. ...

Fit and proper persons.

3. (1) The applicant or licensed fiduciary is a fit and proper person to hold a fiduciary licence and, in the case of a full fiduciary licence, every person who is, or is to be, a director, controller, partner or manager of the applicant or licensed fiduciary is a fit and proper person to hold that position.

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

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed fiduciary or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of clients of the applicant or licensed fiduciary are, or are likely to be, in any way threatened by his holding a fiduciary licence or that position,
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of

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clients and his record of compliance with any provision contained in or made under –

- (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
- (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
- (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007,
- (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, or
- (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and

- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced in paragraph 1(2)[,

- (g) his record of compliance with any provision contained in or made under the Companies (Guernsey) Law, 2008 in acting as a corporate services provider or a resident agent within the meaning of that Law.]

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has –

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,

- (b) contravened any provision contained in or made under –
 - (i) this Law,

 - (ii) the regulatory Laws,

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

- (iv) 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 who have- been declared in a state of "desastre"),
- (c) engaged in any business practices (whether unlawful or not) –
 - (i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or
 - (ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on regulated activities, or
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a

way as to cast doubt on his competence and soundness of judgement.

(4) For the purposes of this paragraph and for the avoidance of doubt,

- (a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,
- (b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and
- (c) "**enactment**" includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Business to be directed by at least two individuals.

4. (1) In the case of a full 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 (I), 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.

4A. 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 licensed fiduciary conducts or, in the case of a person who is not yet carrying on a regulated activity, will conduct his business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), a person shall not be regarded as conducting his business in a prudent manner unless –

- (a) he maintains or, as the case may be, will maintain –
 - (i) a capital base, and

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- (ii) insurance cover,

of an amount which the Commission considers appropriate,
- (b) he maintains or, as the case may be, will maintain adequate liquidity, having regard to –
 - (i) the relationship between his liquid assets and his actual and contingent liabilities,
 - (ii) the times at which those liabilities will or may fall due and his assets will mature,
 - (iii) the nature and scale of his operations,
 - (iv) the risks inherent in those operations and (where the person 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) in the case of a full fiduciary licence, he makes or, as the case may be, will make adequate provision for –
 - (i) depreciation or diminution in the value of his assets (including provision for bad or doubtful

- debts),
- (ii) liabilities which will or may fall to be discharged by him, and
- (iii) losses which he will or may incur, and
- (d) he maintains or, as the case may be, will maintain –
 - (i) adequate accounting and other records of his business, and
 - (ii) adequate systems of control of his business and records.

(3) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether a person is to be regarded as conducting his business in a prudent manner, to the following –

- (a) in the case of a full 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 him for the proper maintenance and development of such systems,

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- (c) the complaints history of the applicant or licensed fiduciary, and
 - (d) in the case of a full fiduciary licence, whether the structure or organisation of the group of which the applicant or licensed fiduciary is a part, 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 his operations, and
 - (ii) an amount and nature sufficient to safeguard the interests of his clients, having regard to –
 - (A) the nature and scale of his operations,
 - (B) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company, and
 - (C) any other factors appearing to the Commission to be relevant,
 - (b) subparagraph 2(b), in considering the liquid assets of a

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person, the Commission may, to such extent as it thinks appropriate, take into account –

- (i) the assets of the person, and
 - (ii) the facilities which are available to him 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 person to be managed prudently, and
 - (B) the person to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 3(2)(f), and
 - (ii) where the person 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.

5A. The applicant, licensed fiduciary and any person who is, or is to be, a director, controller, partner or manager 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.

6. The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, make regulations amending the provisions of this Schedule.]

NOTES

Schedule 1 was substituted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 1, with effect from 23rd January, 2008.¹³

In Schedule 1,

paragraph 2 was repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 1, with effect from 23rd January, 2008;

the second sub-paragraph (g) of paragraph 3(2) was inserted by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 3, with effect from 1st July, 2008.

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 his favour by that other company of such a power,
- (b) that a person's appointment thereto follows necessarily

from his appointment as director of that other company,

- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,

- (b) subject to paragraphs (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 deed 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 paragraph (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, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee] of the Chief Pleas of Sark, make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law.

NOTE

In accordance with the Resolution of the Chief Pleas of Sark of 20th January, 2010 on the Report from the General Purposes and Advisory Committee entitled "Transfer of Functions Ordinance", with effect from that date, the functions of the Sark General Purposes and Finance Committee and its Chairman arising under this Law were transferred to the Sark General Purposes and Advisory Committee.¹⁴

¹ These words were previously substituted by the Sark General Purposes and

Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

² These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

³ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

⁴ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

⁵ Prior to their substitution, these words were amended by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(5)(a), with effect from 11th August, 2003.

⁶ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of

the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

⁷ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

⁸ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

⁹ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

¹⁰ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

¹¹ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

¹² These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

¹³ Prior to its substitution, Schedule 1 was amended by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001.

¹⁴ These words were previously substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001; and the functions, rights and liabilities of the Sark General Purposes and Finance Committee and its President arising under this Law were previously transferred to them from the Sark General Purposes and Advisory Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from that same date, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.