PROJET DE LOI

ENTITLED

The Protection of Investors (Bailiwick of Guernsey) Law, 2020 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. XVIII of 2020; as amended by the: Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (No. ** of 2022); Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023 (No. ** of 2023). See also the: Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (No. XII of 2022); Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); Financial Services Commission (Fees) Regulations, 2022 (G.S.I. No. 99 of 2022). This Law is prospectively amended by the: Partnership (Alderney) Law, 2021 (No. ** of 2022); Limited Partnerships (Alderney) Law, 2021 (No. ** of 2022).

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The Protection of Investors (Bailiwick of Guernsey) Law, 2020

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The Protection of Investors (Bailiwick of Guernsey) Law, 2020

THE STATES, in pursuance of their Resolutions of the 30th October, 2015[a] and the 27th November, 2015[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
LICENSING OF INVESTMENT BUSINESS

Controlled investment business

Controlled investment business.

1. (1) Subject to the provisions of this Law, persons shall not carry on, or hold themselves out as carrying on, controlled investment business in or from within the Bailiwick, except under the authority of and in accordance with the conditions of a licence.

(2) Subject to the provisions of this Law, a Bailiwick body shall not carry on, or hold itself out as carrying on, any controlled investment business in or from within a jurisdiction outside the Bailiwick, unless –

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a Article V of Billet d'État No. XVIII of 2015.

b Article VIII of Billet d'État No. XX of 2015.

(a) it is licensed under the provisions of this Law to carry on that business –

(i) in the Bailiwick, and

(ii) in that jurisdiction, and

(b) that business would be lawfully carried on by that body if it were carried on by it in the Bailiwick.

(3) For the purposes of this Law –

(a) persons carry on controlled investment business if, by way of business, they engage in a restricted activity in connection with a controlled investment,

(b) an investment of any of the categories identified and described in Schedule 1 constitutes a **"controlled investment"**, and

(c) any activity identified and described in Schedule 2 constitutes a **"restricted activity"** when carried on in connection with a controlled investment.

(4) Persons who carry on, or hold themselves out as carrying on, a restricted activity in contravention of this section are guilty of an offence.

NOTE

The following cases referred to the Protection of Investors (Bailiwick of Guernsey) Law, 1987:

Bordeaux Services (Guernsey) Limited et al v. The Guernsey Financial Services Commission (2016) (Unreported, Royal Court, 11th May) (Guernsey Judgment No 18/2016)*;*

David John Merrien v. Cees Schrauwers (Chairman of the Guernsey Financial Services Commission) (2016) (Unreported, Royal Court, 9th June) (Guernsey Judgment No 23/2016)*;*

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017)*;*

Y v. Guernsey Financial Services Commission (2018) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 47/2018)*;*

Guernsey Financial Services Commission v. Y [2019]GCA076 (Unreported, Court of Appeal, 17th June).

Power to vary controlled investment business.

2. (1) The Committee may by regulation amend Schedule 1 or Schedule 2 so as to –

(a) include in or delete from Schedule 1 any identification and description of any category of controlled investment,

(b) include in or delete from Schedule 2 any identification and description of any activity constituting a restricted activity,

(c) vary the description of any category of controlled investment identified in Schedule 1, or

(d) vary the description of any restricted activity identified in Schedule 2.

(2) The Committee may by regulation provide that all of the activities identified in Schedule 2, or only such of those activities as are specified in the Ordinance, constitute restricted activities when carried on in connection with any

specified category of controlled investment identified and described in Schedule 1 or in connection with any specified description of controlled investment within any such category.

Licences

Application for licence.

3. (1) An application for a licence to carry on controlled investment business shall –

(a) be made to the Commission in such form and manner as, subject to the provisions of any rules made under section 13, the Commission may require,

(b) describe the restricted activity proposed to be carried on,

(c) identify the category of controlled investment in connection with which the restricted activity is proposed to be carried on,

(d) if the applicant proposes to carry on controlled investment business in, or from within, Alderney or Sark, contain a statement identifying the Island in which, or from within which, the applicant intends to carry on that business,

(e) contain an address for the service on the applicant of any document required or authorised to be served on the applicant under the provisions of this Law, which address –

(i) if the applicant proposes to carry on business exclusively in, or from within, Alderney or Sark, shall be an address in Alderney or Sark, as the case may be, or

(ii) in any other case, shall be an address in Guernsey,

(f) contain or be accompanied by such other particulars, and such information or documents, as the Commission may require, and

(g) be accompanied by such fee as may be prescribed by regulations under section 23.

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

(3) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (2) –

(a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information,

statement or other document as the Commission may specify,

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

(4) The Commission's requirements under subsections (1), (2) and (3) may differ as between different applications.

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

(6) An application is deemed to be withdrawn if –

(a) the applicant has failed for –

(i) a period of three months, or

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

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

(b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document

described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

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

(d) that notice has not, within that period of 14 days, been withdrawn by the Commission, and

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

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

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

[(6A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a licence.]

(7) Before deciding whether or not to grant a licence the Commission shall, if the application contains a statement under subsection (1)(d) to

the effect that the applicant proposes to carry on controlled investment business in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(8) If at any time a licensee proposes to carry on controlled investment business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (7).

NOTES

In section 3, subsection (6A) was inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(2), with effect from 1st January, 2023.

The following Regulations have effect as if made under section 3:

Investor Protection (Designated Countries and Territories) Regulations, 1989.

Grant or refusal of licence.

4. (1) On an application for a licence being made to it under and in accordance with the provisions of section 3 the Commission may –

(a) subject to the provisions of subsection (3), grant the application and issue a licence to the applicant, or

(b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a licence unless satisfied that the criteria specified in Schedule 4 (the "minimum criteria for licensing") are fulfilled –

(a) in relation to the applicant, and

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

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

(a) the provisions of any code or guidance issued under section 28 of this Law or section 57 or 120 of the Enforcement Powers Law, and

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

(4) The Commission may refuse an application for a licence which is not accompanied by the fee prescribed by regulations under section 23 or which is otherwise not made in accordance with the provisions of this Law.

Imposition of conditions on licences.

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

(2) Such conditions may apply to licensees generally, to any class or description of licensee or to any particular licensee.

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

(4) Without prejudice to the generality of subsection (1), a condition imposed under this section may –

(a) prohibit a licensee from –

(i) entering into transactions of any specified description or in specified circumstances or to a specified extent,

(ii) soliciting business in a specified place, or from persons of a specified description, or otherwise than from such persons,

(iii) carrying on business in a specified manner or otherwise than in a specified manner,

(iv) carrying on business in or from within, or otherwise than in or from within, a specified Island in the Bailiwick,

(v) disposing of, or otherwise dealing with, any, or any specified, assets, in any specified manner or otherwise than in a specified manner,

(b) require a licensee to take all necessary steps to transfer to a trustee, custodian, licensee, licensed banking institution or person of any other class or description, in

each case approved by the Commission, all assets, or all assets of any specified description, which –

(i) belong to the licensee, or

(ii) are held by or to the order of the licensee and either belong to investors or clients or belong to –

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

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

(c) require a licensee to maintain in the Bailiwick assets of such value and of such description as appear to the Commission to be necessary or desirable with a view to ensuring that the licensee will be able to meet the liabilities in respect of the business carried on by the licensee,

(d) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the licensee,

(e) prohibit, restrict or impose limitations on the carrying on of controlled investment business, or any class or description of controlled investment business, in or

from within any place, or any particular place, outside the Bailiwick –

(i) by the licensee itself,

(ii) by any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or

(iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).

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

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

(7) A licensee whose licence is subject to a condition as to its duration may apply under section 3 for a new licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant)

to any matter to which it may have regard under the provisions of section 4 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a licence or (as the case may be) to suspend or revoke a licence.

Surrender of licences.

6. (1) A licensee may surrender its licence by notice in writing served upon the Commission.

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

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

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 57, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

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

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

(a) if, in the opinion of the Commission, the liabilities of the licensee have not been discharged or transferred,

(b) if the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or

(c) if the name of the licensee would not, immediately after the surrender, comply with the requirements of section 49 of the Enforcement Powers Law.

(7) Upon the surrender of a licence no fee paid or payable by the licensee concerned pursuant to regulations under section 23 shall be refunded, remitted, reduced or waived.

PART II
AUTHORISATION OR REGISTRATION OF COLLECTIVE INVESTMENT SCHEMES

Restriction on activities in connection with collective investment schemes.

7. Subject to the provisions of section 44, a licensee shall not engage by way of business in any restricted activity in connection with a collective investment scheme unless –

(a) the scheme is an authorised or registered collective investment scheme of a specified class, and

(b) he carries on that activity in accordance with –

(i) any conditions imposed under section 9 in respect of that scheme, and

(ii) any rules and regulations applicable to any authorised or registered collective investment scheme of that class.

Authorisation or registration of collective investment schemes.

8. (1) A collective investment scheme may be declared by the Commission to be an authorised or registered collective investment scheme of a specified class or a collective investment scheme of such other classification as the States may specify by Ordinance.

(2) An Ordinance under subsection (1) may provide that the provisions of this Law and of any other enactment apply in respect of collective investment schemes of a classification specified by such an Ordinance as they apply in respect of authorised or registered collective investment schemes, subject to such exceptions, adaptations and modifications as may be so specified; and in this subsection **"enactment"** means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(3) A person seeking a declaration that a scheme is an authorised or registered collective investment scheme shall –

(a) make application to the Commission in such form and manner as, subject to the provisions of any rules made under section 13, the Commission may require containing or accompanied by such particulars, information or documents as, subject to the provisions of any such rules, the Commission may require, and

accompanied by such fee as may be prescribed by regulations under section 23, and

(b) pending determination of the application, furnish the Commission with such further information or documents about the scheme concerned as, subject to the provisions of any such rules, the Commission may require.

(4) On an application being made to it under and in accordance with this section the Commission may –

(a) if it appears to the Commission that the scheme satisfies the requirements referred to in subsection (5), grant the application and issue –

(i) in the case of an application for authorisation, an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class,

(ii) in the case of an application for registration, a registration declaring that the scheme is a registered collective investment scheme of a specified class, or

(b) refuse the application.

(5) The requirements for an authorised or registered collective investment scheme are set out in the provisions of Schedule 3.

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

(7) An application is deemed to be withdrawn if –

(a) the applicant has failed for –

(i) a period of three months, or

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

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

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

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

(d) that notice has not, within that period of 14 days, been withdrawn by the Commission, and

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

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

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

[(7A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of an authorisation or registration under this section.]

(8) An authorisation or registration under this section shall state –

(a) the name of the authorised or registered collective investment scheme,

(b) the specified class of authorised or registered collective investment scheme which the scheme is declared to be.

NOTE

In section 8, subsection (7A) was inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(3), with effect from 1st January, 2023.

Imposition of conditions on authorisations or registrations.

9. (1) The Commission may, when issuing an authorisation or registration of a collective investment scheme under section 8 or at any time thereafter, by notice in writing served on the designated administrator of the scheme, impose such conditions in respect of the authorisation or registration as it thinks fit.

(2) Such conditions may apply to authorised or registered collective investment schemes generally, to any class or description of authorised or registered collective investment scheme or to any particular authorised or registered collective investment scheme.

(3) The Commission may, by notice in writing served on the designated administrator of an authorised or registered collective investment scheme, vary or rescind any condition in respect of the authorisation or registration.

(4) Without prejudice to the generality of subsection (1), a condition imposed under this section in relation to an authorised or registered collective investment scheme may prohibit or restrict the promotion of the scheme –

(a) to the public in the Bailiwick, or

(b) from within the Bailiwick to the public in any specified jurisdiction, or elsewhere than in any specified jurisdiction.

(5) Where there is a contravention of any condition of the authorisation or registration of a collective investment scheme –

(a) where the authorised or registered collective investment

scheme is a person, it is guilty of an offence, and

(b) where the authorised or registered collective investment scheme is not a person, and without prejudice to the provisions of sections 63 and 64, the officers of the scheme are guilty of an offence.

(6) The contravention of a condition of an authorisation or registration of a collective investment scheme is, whether or not constituting an offence under subsection (5), a ground for the suspension or revocation of the authorisation or registration (see section 30 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) An authorised or registered collective investment scheme whose authorisation or registration is subject to a condition as to its duration may apply under section 8 for a new authorisation or registration and, if that authorisation or registration is granted, the first-mentioned authorisation or registration shall cease to have effect.

Avoidance of exclusion clauses.

10. Any provision of an authorised or registered collective investment scheme which would have the effect of exempting any person carrying on a restricted activity in relation to the scheme from liability for failure to exercise due care and diligence in the performance of that person's functions in respect of the scheme, is void to that extent.

Surrender of authorisation or registration.

11. (1) The designated administrator or the designated trustee or custodian of an authorised or registered collective investment scheme may surrender the scheme's authorisation or registration by notice in writing served upon the

Commission.

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

(3) The surrender of an authorisation or registration shall, subject to the provisions of subsection (5), be irrevocable unless it is expressed to take effect on a particular date and before that date the Commission by notice in writing to the designated administrator or the designated trustee or custodian of the scheme, upon the written application of the designated administrator or the designated trustee or custodian, allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of an authorisation or registration to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 57, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of an authorisation or registration is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of an authorisation or registration –

(a) if, in the opinion of the Commission, the liabilities of the scheme have not been discharged or transferred,

(b) if the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or

(c) if the name of the scheme would not, immediately after the surrender, comply with the provisions of Schedule 3.

(7) Upon the surrender of a scheme's authorisation or registration no fee paid or payable by or in respect of the scheme or the authorisation or registration pursuant to regulations under section 23 shall be refunded, remitted, reduced or waived.

PART III
CONDUCT OF CONTROLLED INVESTMENT BUSINESS

Investment business rules

Rules under Part III.

12. (1) The Commission may make rules in relation to the carrying on of controlled investment business by licensees and in relation to authorised or registered collective investment schemes.

(2) Without prejudice to the generality of subsection (1), rules may make provision in respect of any of the matters referred to in sections 13 to 21 inclusive.

(3) Rules may –

(a) apply to both authorised and registered collective investment schemes or to either of such schemes, to all controlled investments or to any category or description of controlled investments, or to all restricted activities or to any description of restricted activities,

(b) set out general conditions applicable to all licences, to specified classes of licences, to licences issued to specified classes of persons, to licences issued in respect of specified restricted activities or to licences issued for the carrying on of restricted activities in connection with specified categories or descriptions of controlled investments,

(c) make different provision in respect of the different cases mentioned in paragraphs (a) and (b) of this subsection, in respect of different circumstances within those cases and in respect of different circumstances generally,

(d) exempt from compliance with the rules, either unconditionally or subject to specified conditions, such classes or descriptions of restricted activities, controlled investments or licensees as may be specified, in such circumstances as may be specified.

NOTES

The following Rules have been made under section 12:

AIFMD Marketing Rules, 2021;

AIFMD Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Capital Adequacy Rules, 2021;
Class B Rules, 2021;
Class Q Rules, 2021;
Conduct of Business Rules, 2021;
Guernsey Green Fund Rules, 2021;
PIF Rules, 2021;
Prospectus Rules, 2021;
Registered CIS Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022;
Natural Capital Fund Rules;
Natural Capital Fund (Amendment) Rules, 2023.

The following Rules have effect as if made under section 12:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;
Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes Rules, 1988 (Amendment) Rules, 1996;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2008;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021;

Rules as to applications for and grant of licences, etc.

13. (1) Rules may make any provision not inconsistent with the provisions of this Law governing applications for, and the issue and validity of, licences, authorisations and registrations and other relevant documents.

(2) Without prejudice to the generality of subsection (1), rules may –

(a) prescribe the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,

(b) prescribe the form and content of relevant documents,

(c) make provision as to the renewal of relevant documents the period of validity of which is limited by virtue of any regulations made under section 24 or otherwise,

(d) prescribe minimum requirements (as to capital, solvency, management, staff, resources and otherwise) to be attained by an applicant for a relevant document.

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

NOTES

In accordance with the provisions of section 81(9) & (10) of this Law, the following Regulations have effect as if they were Rules made under section 13:

Investor Protection (Designated Countries and Territories) Regulations, 1989.

The following Rules have been made under section 13:

AIFMD Marketing Rules, 2021;
AIFMD Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Class B Rules, 2021;
Conduct of Business Rules, 2021;
Prospectus Rules, 2021;
Registered CIS Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022.

The following Rules have effect as if made under section 13:

Collective Investment Schemes (Class B) Rules, 1990;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021.

Accounting and financial rules.

14. (1) Rules may make provision as to the financial conduct of controlled investment business.

(2) Without prejudice to the generality of subsection (1), rules may make provision as to –

(a) the manner in which money paid to a licensee in specified circumstances is to be held, dealt with and accounted for by the licensee,

(b) the preparation, keeping, form, content, maintenance, submission to the Commission and publication of accounts, reports and other records,

(c) the separation of funds attributable to different categories of controlled investments and to different descriptions of investments within each category, the maintenance of accounts and records in relation to those funds and the manner in which they are to be dealt with,

(d) subject to the provisions of section 43, the appointment, removal, powers and duties of an auditor to audit accounts relating to controlled investment business and the manner in which those accounts are to be audited.

NOTES

The following Rules have been made under section 14:

AIFMD Marketing Rules, 2021;
AIFMD Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Capital Adequacy Rules, 2021;
Class B Rules, 2021;
Class Q Rules, 2021;
Conduct of Business Rules, 2021;
Guernsey Green Fund Rules, 2021;
PIF Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022;
Natural Capital Fund Rules;
Natural Capital Fund (Amendment) Rules, 2023.

The following Rules have effect as if made under section 14:

Collective Investment Schemes (Class B) Rules, 1990;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021.

Conduct of business rules.

15. (1) Rules may make provision in relation to controlled investment business and the carrying on thereof by licensees and generally as to the conduct of, and the manner in which licensees conduct, or hold themselves out as conducting, their business.

(2) Without prejudice to the generality of subsection (1), rules may –

(a) prohibit licensees from carrying on, or holding themselves out as carrying on, restricted activities –

(i) in connection with controlled investments of any specified category or description,

(ii) in connection with controlled investments of a category or description, or on a scale, or in a manner, other than that specified in a notice served on them by the Commission, or

(iii) in relation to persons of a specified description or persons other than those of a specified description,

(b) prescribe the manner in which licensees must conduct, govern, manage and operate their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of investor or client assets, financial resources, the calculation of technical provisions and capital requirements),

(c) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensees of any discretionary powers afforded to them by an investor or client,

(d) require licensees to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any restricted activity, and specify the powers and duties of persons so employed,

(e) control the relationship between licensees and their servants and agents and, without prejudice to the generality of the foregoing –

(i) require licensees to impose and enforce restrictions on the activities carried on by their servants and agents,

(ii) enable or require information obtained in the course of carrying on any description of the controlled investment business of a licensee to be withheld from persons involved in carrying on any other description of the controlled investment business of that licensee,

(f) regulate or prohibit the carrying on of any other business in conjunction with any description of controlled investment business,

(g) require specified information to be given in the form and manner and at the time specified –

(i) to the Commission,

(ii) to the public,

(iii) to any specified classes or descriptions of persons,

(iv) without prejudice to any regulations made under section 27(b), to any person whom a licensee invites to take any step with a view to acquiring a controlled investment, or

(v) to any person whom a licensee advises as to the exercise of any right conferred by a controlled investment,

(h) without prejudice to any rules made under section 18, require licensees to make provision for the protection of investors in the event of the cessation of any controlled investment business carried on by them,

(i) impose requirements as to the places and manner in which, and the times during which, licences are to be displayed or available for inspection by the public,

(j) make provision as to the settlement of disputes.

NOTES

The following Rules have been made under section 15:

AIFMD Marketing Rules, 2021;
AIFMD Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Capital Adequacy Rules, 2021;
Class B Rules, 2021;
Class Q Rules, 2021;

Conduct of Business Rules, 2021;
Guernsey Green Fund Rules, 2021;
Prospectus Rules, 2021;
Registered CIS Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022;
Licensees (Capital Adequacy)(Amendment) Rules, 2022;
Licensees (Conduct of Business) (Amendment) Rules, 2022;
Natural Capital Fund Rules;
Natural Capital Fund (Amendment) Rules, 2023.

The following Rules have effect as if made under section 15:

Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes Rules, 1988 (Amendment) Rules, 1996;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Financial Services Commission Cyber Security Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2021;
Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) (Revocation) Rules, 2021.

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

16. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensee or an applicant for a

licence, by notice in writing served on the licensee or applicant adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular controlled investment business carried on by, the licensee or applicant.

(2) The Commission shall not exercise the powers conferred by subsection (1) in any case unless it appears to the Commission that –

(a) compliance with the requirements in question would be unduly burdensome for the licensee or applicant having regard to the benefit which compliance would confer on investors, and

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

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

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

NOTE

The following Rules have been made under section 16:

Guernsey Green Fund Rules, 2021;
PIF Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022.

Promotion rules.

17. (1) Rules may prohibit, restrict or control the promotion of any

controlled investment by any person, whether by means of prospectuses, advertisements, invitations or otherwise.

(2) Without prejudice to the generality of subsection (1), rules may –

(a) make provision as to prospectuses, and in particular –

(i) specify circumstances in which a prospectus must be issued, and prohibit or restrict the promotion of any specified category or description of controlled investment by any other means unless a prospectus has been issued in accordance with the rules,

(ii) prohibit, restrict or control the issue of prospectuses in relation to any specified description of controlled investment business,

(iii) impose requirements as to the form and content of prospectuses, including requirements as to their submission to, and authorisation by, the Commission,

(iv) make special provision concerning the submission to the Commission, and the publication, of updated information concerning the controlled investments to which a prospectus relates, and of corrections to and changes in that information, including special provision as to the payment of compensation to

investors who suffer loss as a result of any omission from, or misleading statement in, any such prospectus or information,

(b) prohibit licensees or any other person from promoting any category or description of controlled investment to the public,

(c) restrict the circumstances and manner in which a licensee or any other person may promote any category or description of controlled investment to the public or to any description of persons.

NOTES

The following Rules have been made under section 17:

AIFMD Marketing Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Class B Rules, 2021;
Class Q Rules, 2021;
Prospectus Rules, 2021;
Registered CIS Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022.

The following Rules have effect as if made under section 17:

Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes (Class A) Rules, 2002;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;

Indemnity and compensation rules.

18. (1) Rules may provide for indemnity against any claim, or compensation for loss arising from inability to meet any claim, in respect of any description of civil liability incurred by a licensee in connection with the licensee's controlled investment business.

(2) For the purpose of providing for indemnity or compensation, rules under this section may –

(a) authorise the Commission to establish, maintain and administer a fund or funds, or specify circumstances in which the Commission may do so,

(b) authorise the Commission to take out and maintain insurance with a licensed insurer,

(c) require any person to whom the rules apply to take out and maintain insurance with a licensed insurer.

(3) Without prejudice to the generality of subsections (1) and (2), rules under this section may –

(a) specify the terms and conditions on which, and the extent to which, indemnity or compensation is to be available and any circumstances in which the right to it is to be excluded or modified,

(b) provide for the management, administration and protection of any fund or funds maintained by virtue of

rules under subsection (2)(a) and require licensees to make payments to any such fund, or specify the circumstances in which, and the terms upon which, the Commission may by notice in writing require them to make such payments,

(c) require licensees to make payments by way of premium on any insurance policy maintained by the Commission by virtue of rules under subsection (2)(b),

(d) prescribe the conditions which an insurance policy must satisfy for the purposes of rules under subsection (2)(c),

(e) authorise the Commission to determine the amount which the rules require to be paid to the Commission or an insurer, subject to such limits or in accordance with such provisions as may be specified in the rules,

(f) specify circumstances in which, where sums are paid by the Commission or an insurer in satisfaction of claims against a licensee, proceedings may be taken against that licensee by the Commission or the insurer,

(g) empower the Commission to take such steps as the Commission considers necessary or expedient to ascertain whether or not the rules are being complied with.

NOTES

The following Rules have been made under section 18:

Guernsey Green Fund Rules, 2021;
PIF Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022;
Natural Capital Fund Rules;
Natural Capital Fund (Amendment) Rules, 2023.

The following Rules have effect as if made under section 18:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2008.

Authorised or registered collective investment scheme rules.

19. (1) Rules may, subject to the provisions of sections 7, 8 and 9, and without prejudice to the provisions of any other rules, or to the provisions of any regulations (which, unless those rules or regulations otherwise specify or the contrary intention appears, apply to authorised or registered collective investment schemes as they apply to any other category of controlled investment) make provision as to the constitution, conduct and dissolution of authorised or registered collective investment schemes, the functions of their designated administrators, the rights of investors in such schemes and, in the case of authorised and registered open-ended collective investment schemes, the functions of their designated trustees and custodians.

(2) Rules may specify (by the use of a number, a letter, a title or otherwise) different classes of authorised or registered collective investment schemes for the purposes of this Law; and, without prejudice to section 12(3), any rules such as are described in subsection (3) of this section may apply to, and make different provision in relation to, schemes falling within each class so specified.

(3) Without prejudice to the generality of subsection (1), rules may –

(a) impose requirements, not inconsistent with the provisions of Schedule 3, as to the contents of the trust deed, memorandum, articles of incorporation or other instrument constituting an authorised or registered collective investment scheme, including rules incorporating into any such instrument provisions overriding its express terms and, without prejudice to section 10, rendering the latter void to the extent of any inconsistency with any provision so incorporated,

(b) regulate the issue and redemption of units in such schemes,

(c) make provision as to the expenses of such schemes and the means of meeting those expenses,

(d) restrict or regulate the investment and borrowing powers exercisable in relation to such schemes,

(e) regulate or prohibit the carrying on of any other business or activity, or of any other description of business or activity, by the designated administrators of such schemes,

(f) impose restrictions on the extent to which, and requirements (including requirements to obtain the authorisation of the Commission and as to the publication of proposals) as to the manner in which –

(i) an amendment may be made to the terms of

such a scheme, or

(ii) a person carrying on any specified restricted activity in connection with such a scheme may be replaced.

NOTES

The following Rules have been made under section 19:

AIFMD Marketing Rules, 2021;
AIFMD Rules, 2021;
Authorised Closed-ended Investment Schemes Rules, 2021;
Class B Rules, 2021;
Class Q Rules, 2021;
Guernsey Green Fund Rules, 2021.

The following Rules have effect as if made under section 19:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;
Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes Rules, 1988 (Amendment) Rules, 1996;
Collective Investment Schemes (Class A) Rules, 2002;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2008;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021.

Rules as to notification of ancillary vehicles.

20. (1) Rules may make provision in respect of the notification to the Commission of ancillary vehicles or any activity in respect thereof.

(2) Rules under subsection (1) may, without limitation, provide that –

(a) notifications shall be made in such form and manner, and shall be accompanied by such information and documents, as the rules may specify or as the Commission may require,

(b) notifications shall be accompanied by such fee as may be prescribed by regulations under section 23 (and section 23 shall have effect accordingly),

(c) the Commission may at any time after receipt of notification require the person giving the notification and other persons described in the rules to furnish such additional information and documents as it may consider necessary or desirable,

(d) notifications shall be valid for such period as may be specified in the rules or as the Commission may determine,

(e) if, whether before or after the giving of notification, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the person giving the

notification (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), that person shall inform the Commission of the change, as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the rules may provide),

(f) a failure to comply with any requirement arising by virtue of paragraph (e) may, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, be taken into account by the Commission for the purpose of the performance of its functions,

(g) an ancillary vehicle, or activity in respect of an ancillary vehicle, when notified in accordance with the provisions of the rules, is, subject to the provisions of the rules, by virtue of section 3(1)(aa) of the Regulation of Fiduciaries Law exempt from the operation of section 1 of that Law and accordingly not subject to licensing under the provisions of that Law.

(3) In this section an **"ancillary vehicle"** means a body, entity or arrangement –

(a) which is ancillary to a controlled investment or to the carrying on of a regulated activity within the meaning of this Law,

(b) which, or the carrying on of which, is not required to be

licensed, authorised or registered under the provisions of this Law, and

(c) which, or any activity in respect of which, is –

(i) a regulated activity within the meaning of the Regulation of Fiduciaries Law, and

(ii) required to be licensed under that Law or exempted by the provisions of that Law from the requirement to be licensed thereunder.

(4) The Committee may by regulation amend the meaning of **"ancillary vehicle"**.

NOTE

The following Rules have been made under section 20:

Guernsey Green Fund Rules, 2021;
Guernsey Green Fund (Amendment) Rules, 2022;
Natural Capital Fund Rules;
Natural Capital Fund (Amendment) Rules, 2023.

Rules as to declarations of status of schemes, investments, etc.

21. (1) The Commission may make such rules as it think fit as to the making of declarations by the Commission –

(a) that a particular activity –

(i) is or is not a restricted activity, or

(ii) would or would not be a restricted activity if

carried on in connection with a controlled investment,

(b) that a particular investment is or is not –

(i) a controlled investment, or

(ii) a controlled investment of a particular category,

(c) that a particular scheme, arrangement, security or other investment is or is not a collective investment scheme or a general security or derivative for the purposes of Schedule 1,

(d) as to any other matter specified by the rules as being a matter in respect of which a declaration may be made by the Commission under or for the purposes of the rules.

(2) Rules under this section may, without limitation, make provision in respect of –

(a) the making of applications for –

(i) declarations referred to in subsection (1), and

(ii) the variation, renewal or surrender thereof,

(b) the granting or refusal of applications,

(c) the form and manner of applications and the

information and documents which must accompany them,

(d) the period of validity of declarations,

(e) the revocation, variation, renewal or surrender of declarations,

(f) the provision of information and documents from persons holding declarations and other persons described in the rules,

(g) requirements to inform the Commission if, whether before or after the grant of a declaration, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant or (as the case may be) the person to whom the declaration was granted for the purposes of the application or declaration (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise),

(h) failure to comply with any requirement arising by virtue of paragraph (f), including, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, provision that the failure is a ground for the refusal or revocation of the declaration,

(i) the attachment of such conditions as the rules may specify or as the Commission may think fit, whether at

the time of granting or renewing a declaration or otherwise, and the removal or modification of conditions previously attached,

(j) appeals,

(k) the payment of such fee as may be prescribed by regulations under section 23 in respect of applications mentioned in paragraph (a) and the granting, variation, renewal or surrender of declarations or otherwise for the purposes of the rules (and section 23 shall have effect accordingly).

NOTE

The following Rules have been made under section 21:

Guernsey Green Fund (Amendment) Rules, 2022.

Investment business regulations

Regulations under Part III.

22. (1) The Committee may make regulations concerning controlled investment business.

(2) Without prejudice to the generality of subsection (1), regulations may make provisions in respect of any of the matters referred to in sections [24] to 27 inclusive.

(3) Regulations may, without prejudice to the generality of section 71 –

(a) apply to all controlled investments or to any category or description of controlled investments, or to all restricted activities or to any description of restricted activities,

(b) prescribe general conditions applicable to all licences, to prescribed classes of licences, to licences issued to prescribed classes of persons, to licences issued in respect of prescribed restricted activities or to licences issued for the carrying on of restricted activities in connection with prescribed categories or descriptions of controlled investments,

(c) make different provision in respect of the different cases mentioned in paragraphs (a) and (b) of this subsection, in respect of different circumstances within those cases and in respect of different circumstances generally,

(d) exempt from compliance with the regulations, either unconditionally or subject to prescribed conditions, such categories or descriptions of restricted activities, controlled investments or licensees as may be prescribed, in such circumstances as may be prescribed,

and in this subsection **"prescribed"** means prescribed by the regulations.

NOTES

In section 22, the figures in square brackets in subsection (2) were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 2(2), Schedule, paragraph 9(1), with effect from 7th July, 2023.

The following Regulations have been made under section 22:

Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2023;
Financial Services Commission (Fees) (Amendments) Regulations, 2024.

The following Regulations have effect as if made under section 22:

Investor Protection (Designated Countries and Territories) Regulations, 1989;
Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992;
Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015;
Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017;
Financial Services Commission (Fees) (Amendment) Regulations, 2018;
Protection of Investors (Fees) (Amendment) Regulations, 2021.

Fees regulations and recovery of fees.

23. (1) [The Commission may by regulation] prescribe fees to be payable to the Commission in connection with –

(a) any of the matters specified in subsection (2), and

(b) such other matters as the [Commission] may by regulation prescribe for the purposes of this Law.

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

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

(b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification under the provisions of or for the

purposes of this Law,

(c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,

(d) any other matters in respect of –

(i) licensees or licences, or

(ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes.

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

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

(a) prescribe fees to be payable to the Commission annually or periodically,

(b) specify the dates, times, intervals, occasions, circumstances or events on, at, in or within which the payment of fees or interest is to be made,

(c) provide for the determination or calculation of any fee or interest –

(i) in accordance with or by reference to a scale or other factors prescribed by the regulations, or

(ii) on such other basis as may be so prescribed,

(d) make provision for the payment of fees and interest by instalments of such number and amounts and at such times as the regulations may specify or as the Commission may determine, and

(e) make provision for the variation, on the application of the payer or of the Commission's own motion, of –

(i) the amount of any interest, or

(ii) the number, amounts and times of the instalments by which any fee or interest is to be paid.

(5) Fees and interest payable pursuant to regulations under this section –

(a) are recoverable from –

(i) the person making the application, request or deposit concerned or giving the notification or information concerned,

(ii) the licensee by or in respect of whom, or in respect of whose licence or business, the fee or interest is payable,

(iii) the collective investment scheme in respect of which, or in respect of the authorisation or registration of which, the fee or interest is payable or, if the scheme is not a legal or natural person, the designated administrator thereof, or

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

as a civil debt due to the Commission,

(b) may not (except to the extent that express provision to the contrary is made by or under the regulations or otherwise by or under the provisions of this Law) be refunded, remitted, reduced or waived,

(c) shall, where appropriate, be proportioned in such manner as may be prescribed by the regulations.

(6) Without prejudice to the provisions of sections 22 and 71, regulations under this section may make different provision in respect of –

(a) different categories, classes or descriptions of –

(i) licensee or licence,

(ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes, or

(iii) controlled investment business, or

(b) the same categories, classes or descriptions of –

(i) licensee or licence,

(ii) authorised or registered collective investment schemes or authorisations or registrations of such schemes, or

(iii) controlled investment business,

for different purposes or in respect of different circumstances.

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

NOTES

In section 23, first, the words in the first pair of square brackets in subsection (1) and, second, the word "Commission" in square brackets, wherever occurring, were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 2(2), Schedule, respectively paragraph 9(2) and paragraph 9(3), with effect from 7th July, 2023.

The functions, rights and liabilities of the States of Guernsey Policy and Resources Committee under this section relating to the enactment of regulations or orders which prescribe or specify fees or other charges payable to the Guernsey Financial Services Commission (the "Commission") and ancillary matters were transferred to and vested in the Commission by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 1(a) and section 4(i), with effect from 7th July, 2023, subject to the savings and transitional provisions

in section 3 of the 2023 Ordinance.

The following Regulations have been made under section 23:

Financial Services Commission (Fees and Administrative Financial Penalties) Regulations, 2023;
Financial Services Commission (Fees) (Amendments) Regulations, 2024.

The following Regulations have effect as if made under section 23:

Investor Protection (Designated Countries and Territories) Regulations, 1989;
Financial Services Commission (Fees) (Amendment) Regulations, 2018;
Protection of Investors (Fees) (Amendment) Regulations, 2021.

Regulations limiting validity of licences, authorisations or registrations.

24. Regulations may limit the period of validity of licences issued under section 4 or imposed under section 31 of the Enforcement Powers Law, authorisations or registrations issued under section 8 or other relevant documents within the meaning of section 13(3).

Exemption regulations.

25. Regulations may –

(a) prescribe circumstances in which dealing in a controlled investment by a person as –

(i) a principal,

(ii) a trustee for another person, or

(iii) a personal representative of a deceased person,

shall be deemed not to constitute the carrying on of

controlled investment business by the first-mentioned person,

(b) prescribe circumstances in which the issue by a person of an advertisement in connection with a controlled investment shall be deemed not to constitute the carrying on of controlled investment business by that person.

Unsolicited calls regulations.

26. (1) Regulations may prohibit any person from entering into any, or any description of, controlled investment agreement with an investor in the course of, or in consequence of, a personal visit or oral[, written or electronic] communication made without express invitation.

(2) Regulations under this section may provide that, subject to such exceptions, adaptations and modifications as the regulations may prescribe, section 46 is to apply in relation to any agreement entered into in contravention of the regulations as that section applies in relation to an agreement entered into in contravention of section 1 or in consequence of such a contravention.

NOTE

In section 26, the words in square brackets in subsection (1) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(4), with effect from 1st January, 2023.

Cancellation regulations.

27. Regulations may, without prejudice to section 46 or to any regulations making such provision as is referred to in section 26(2) –

(a) enable an investor, or a person who has agreed to

become an investor, to rescind a controlled investment agreement, or to withdraw an offer to enter into a controlled investment agreement, within such period and in such manner as may be prescribed by the regulations,

(b) require information prescribed by the regulations to be given, in such form and manner and at such time as may be so prescribed, as to any such right of rescission or withdrawal,

(c) provide for the restitution of property and the making and recovery of payments where any such right of rescission or withdrawal is exercised.

Codes and guidance

Power to issue codes of practice and guidance.

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

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

(b) such other persons as appear to the Commission to be appropriate,

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

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

(A) persons carrying on or engaged in controlled investment business or other activities in respect of authorised or registered collective investment schemes, other controlled investments or ancillary vehicles, or

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

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

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules or regulations may be made under sections 12 to 27.

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

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

(a) the Commission, in the performance of its functions, may take the provision of the code or guidance and the contravention thereof into account in determining whether and in what manner to perform those functions, and

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

Principles of conduct

Principles of conduct for licensees.

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

Commission.

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

Directions

Power to issue directions.

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

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

(a) a licensee,

(b) an authorised or registered collective investment scheme,

(c) subject to the provisions of subsection (5), a former licensee or former authorised or registered collective investment scheme,

(d) a person carrying on controlled investment business –

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

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

in respect of such business,

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

(i) a licensee, or

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

(f) a person who is the holder of a supervised role in respect of, or is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,

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

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

(i) a person or entity or class or description of person or

entity prescribed for the purposes of this section by regulations of the Committee.

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

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

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

(b) prohibit or impose limitations on the acceptance or carrying on of controlled investment business and other business, or on the acceptance or repayment of deposits or investor or client monies, the granting of credit or the making of investments,

(c) prohibit, restrict or impose limitations on the acceptance or carrying on of controlled investment business, or any class or description of controlled investment business, in or from within any place, or any particular place, outside the Bailiwick –

(i) by the directed person,

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

purpose vehicle thereof), or

(iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),

(d) prohibit the directed person from soliciting (whether at all or in any specified manner) controlled investment business and other business, either generally or from specified persons or classes or descriptions of persons,

(e) prohibit the directed person from entering into any other transaction or class or description of transactions,

(f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,

(g) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer or employee of, or a designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,

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

(i) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and

of accounts of such description, in such form and manner and containing such information and particulars, as may be so specified,

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

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

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

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c Order in Council No. III of 1993.

executed or entered into by the directed person in contravention of the direction shall be ineffective against any claim by any liquidator of that person,

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

(k) where the directed person is a licensee, and without prejudice to paragraph (j), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensee, licensed banking institution or person of any other class or description, in each case approved by the Commission, all assets, or all assets of any specified class or description, which –

(i) belong to the directed person, or

(ii) are held by or to the order of the directed person and either belong to investors or clients or belong to –

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

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

(l) require the directed person to provide evidence of –

(i) compliance with –

(A) any provision of this Law and the regulatory Laws, or

(B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and

(ii) fulfilment of any of the applicable minimum criteria for licensing (whether in relation to the directed person or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the directed person),

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

(m) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, or the directed person has given notice in writing to the Commission surrendering its licence under section 6 of this Law, require that person to take all reasonable steps to procure the transfer of all or any of its investors or clients to another licensee acceptable to the

Commission,

(n) require the directed person to prepare consolidated accounts (in addition to any accounts required to be prepared by virtue of the provisions of this Law),

(o) require the directed person to appoint a compliance officer,

(p) require the directed person to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission,

(q) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,

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

(5) A direction may be imposed on a former licensee or former authorised or registered collective investment scheme only within a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be), unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, a direction imposed on a former licensee or former authorised or registered collective investment scheme within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

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

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

This subsection does not apply to a former licensee or former authorised or registered collective investment scheme.

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

(a) the occurrence of such date, time, event or circumstance as may be specified in it, or

(b) such prohibitions, restrictions or requirements as may be so specified are complied with, or

(c) rescinded by the Commission, if earlier.

For the avoidance of doubt, a direction imposed on a licensee,

authorised or registered collective investment scheme or other person or entity of a class or description referred to in subsection (2) may remain in force after –

(i) the date of revocation, suspension, expiration or surrender of the licence, authorisation or registration, or, as the case may be,

(ii) the date on which that person or entity ceases to be a person or entity of that class or description.

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

(9) Where the directed person is a licensee or an authorised or registered collective investment scheme, the contravention of a direction under this section –

(a) is, whether or not constituting an offence under subsection (8), a ground for the suspension or revocation of the licence, authorisation or registration held by the directed person (see sections 28, 29 and 30 of the Enforcement Powers Law), but

(b) does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(10) In the event of failure by the directed person to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the directed person to comply, in such

manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(11) In considering whether or not to impose, vary or rescind any direction the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 4 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for, or (as the case may be) to suspend or revoke, a licence.

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

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

(13) In this section the **"appropriate Court"** means –

(a) the Court of Alderney, where the directed person is within the jurisdiction of that Court,

(b) the Court of the Seneschal, where the directed person is within the jurisdiction of that Court,

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

Information as to licensees and collective investment schemes

List of, and information as to, licensees and authorised and registered schemes.

31. (1) The Commission shall –

(a) establish and maintain, in such form as the Commission may determine, a list of –

(i) licensees, and

(ii) authorised and registered collective investment schemes,

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

(c) publish the list on the Commission's official website and in such other manner (if any) as the Commission thinks fit.

(2) The list maintained under subsection (1) shall contain, in relation to each licensee and authorised or registered collective investment scheme –

(a) the name of the licensee or scheme,

(b) in the case of a licensee, the restricted activity identified and described in Schedule 2 in respect of which the

licence was granted,

(c) in the case of a scheme, the category of controlled investment identified and described in Schedule 1 in respect of which the authorisation or registration was granted,

(d) the addresses or principal places of business of the licensee or scheme in the Bailiwick,

(e) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of –

(i) any conditions imposed in respect of the licence, authorisation or registration,

(ii) any directions given to the licensee or scheme, or

(iii) any enforcement requirements imposed on the licensee or scheme or any other person in connection with the licence, authorisation or registration, and

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

(3) The Commission shall publish the fact that a particular person or collective investment scheme –

(a) has ceased to hold a licence, authorisation or registration, as the case may be, whether by virtue of the revocation, surrender or expiry of the licence, authorisation or registration or otherwise, or

(b) has had its licence, authorisation or registration suspended.

(4) The Commission may also publish the fact that a particular person or collective investment scheme –

(a) has been granted or refused a licence, authorisation or registration, or

(b) is not or has not been a licensee or authorised or registered collective investment scheme.

(5) If at any time it appears to the Commission –

(a) whether in consequence of –

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

(ii) any change in relation to a licensee or authorised or registered collective investment scheme, or

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

that the list maintained under subsection (1) or any particular contained in an entry in that list is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

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

Powers to obtain information

Persons to whom section 33 applies.

32. (1) In section 33 a **"relevant person"** means a person or entity of any of the following classes or descriptions –

(a) a licensee,

(b) an authorised or registered collective investment scheme,

(c) an applicant for –

(i) a licence, or

(ii) a declaration that a collective investment scheme is an authorised or registered collective investment scheme,

(d) a former licensee, but subject to the provisions of subsection (2),

(e) a former authorised or registered collective investment scheme, but subject to the provisions of subsection (2),

(f) a person carrying on any class or description of controlled investment business –

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

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

in respect of that class or description of business,

(g) a person other than a person mentioned in paragraph (a), (b), (c) or (f) carrying on any class or description of controlled investment business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

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

(i) an officer, designated administrator or designated trustee or custodian of –

(i) an authorised or registered collective investment scheme or former authorised or registered

collective investment scheme, or

(ii) an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme,

(j) where a person (person A) who is a relevant person by virtue of paragraph (h) or (i) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, person A,

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

(l) any person or entity –

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

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

but subject to the provisions of subsection (5),

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

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

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

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

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

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

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

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

in relation to controlled investment business, including, without limitation, a person who is an auditor of a relevant person so specified, or

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

(2) The provisions of section 33 apply in relation to a former licensee or former authorised or registered collective investment scheme only for a period of six years immediately following the date on which the former licensee or scheme ceased to be licensed, authorised or registered (as the case may be) , unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 33 are exercised in respect of a former licensee or former authorised or registered collective investment scheme within that six year period, they may continue to be exercised in respect of that former licensee or former authorised or registered collective investment scheme after the expiration of that period.

(3) The provisions of section 33 apply in relation to a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section as they apply in relation to a person or entity which is currently a relevant person of that class or description, but only –

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

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

However, for the avoidance of doubt, if the powers conferred by section 33 are exercised in respect of a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensee or former authorised or registered collective investment scheme.

(4) For the avoidance of doubt, if the powers conferred by section 33 are exercised in respect of a licensee, authorised or registered collective investment scheme or other person or entity of a class or description of relevant person referred to in subsection (1), the powers may continue to be exercised in respect of them after –

(a) the date of revocation, suspension, expiration or surrender of their licence, authorisation or registration, or, as the case may be,

(b) the date on which that person or entity ceased to be a relevant person of that class or description.

(5) The powers conferred by section 33 may be exercised in

relation to a person or entity referred to in subsection (1)(l), an associated party referred to in subsection (1)(m), a group entity referred to in subsection (1)(n), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(o) or a company referred to in subsection (1)(q) only –

(a) where it appears necessary or desirable to the Commission to do so –

(i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or

(ii) for the purpose of the performance of its functions, and

(b) with the prior written authority of not less than two ordinary members of the Commission.

Power to require information and production of documents etc.

33. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 32 require the relevant person to furnish the Commission or a person duly appointed by the Commission in that behalf (an **"appointed person"**), on any occasion or at times or intervals, and in respect of the periods, at the place, and in the form or manner, specified by the Commission or appointed person, with such information and documents, or information and documents of such class or description, as the Commission or (on producing, if required to do so, evidence of his or her authority) the appointed person may reasonably require for the purpose of the performance of the Commission's functions, being, if the Commission or the appointed person so requires, information and documents verified in such manner as the Commission or appointed person may reasonably specify.

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

(a) that a requirement to furnish information or documents under subsection (1) may be imposed on, or in relation to, a particular relevant person, all relevant persons or any class or description of relevant persons,

(b) that a requirement as to the manner in which such information or documents are to be verified may direct their annexation to any accounts, and that they be reported upon by the auditor of those accounts in such manner as the Commission may specify.

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

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

(a) if the documents are produced –

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

(ii) to require –

(A) the person who was required to produce

them, or

(B) any other person who is a present or past holder of a supervised role in respect of, or is or was at any time an employee of, or directly or indirectly employed (whether or not under a contract of employment) by, that person, and in addition, where that person is an authorised or registered collective investment scheme, any officer, designated administrator or designated trustee or custodian thereof,

to provide an explanation of any of them,

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

(5) A person on whom a requirement is imposed by or under the provisions of this section shall, if so required by the Commission, provide a statement or declaration, in such form and manner as the Commission may require, that any information and documents furnished by that person pursuant to the requirement are to the best of that person's knowledge accurate, complete and correct, whether for the purpose of supporting the subsequent use of the information or documents in civil, criminal or administrative proceedings in the Bailiwick or elsewhere or for any other purpose.

(6) A statement made by a person ("**A**") in response to a

requirement imposed by or under this section –

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

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

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

(ii) in proceedings for –

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

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

(C) perjury, or

(D) perverting the course of justice.

(7) A requirement imposed by or under the provisions of this section has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or

otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a requirement.

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

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

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

NOTE

In section 33, the words in square brackets in subsection (6)(b)(ii)(A) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(5), with effect from 1st January, 2023.

Falsification, etc, of documents during investigation.

34. A person (**"A"**) upon whom a requirement is imposed by or under the provisions of section 33 or 38 or who knows or has reasonable grounds to suspect –

(a) that such a requirement is likely to be imposed on A, or

(b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 33 or 38,

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

(i) are or would be specified in such a requirement, or

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

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

Communications by auditors, etc, to Commission.

35. (1) This section applies to any matter of which a person becomes aware in the capacity of auditor and which relates to the business or affairs of –

(a) a licensee,

(b) an authorised or registered collective investment scheme,

(c) a client who appears to be carrying on controlled investment business,

(d) an associated party of a person or entity specified in paragraph (a), (b) or (c), or

(e) where the person or entity specified in paragraph (a), (b) or (c) is a partnership or limited liability partnership, any company of which a partner in that partnership or a member of that limited liability partnership is a controller.

(2) This section also applies to any matter of which a person becomes aware in the capacity of a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38, and which relates to the business or affairs of –

(a) the person or entity in relation to which the report is made,

(b) any associated party of that person or entity, or

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

(3) No duty to which –

(a) an auditor, or

(b) a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38,

is subject is contravened by reason of the auditor or that person communicating in good faith to the Commission, whether or not in response to a request made by it, any

information or opinion on a matter to which this section applies.

(4) It is the duty of –

(a) an auditor, or

(b) a person appointed to make a report under section 3(3)(a) or as a skilled person pursuant to the provisions of section 38,

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

(i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on controlled investment business or to be the holder of a supervised role in respect of a licensee, or

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

(5) If it appears to the Commission, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, that any accountants or class thereof or other persons of a class or description referred to in subsection (4)(a) or (b) are not subject to satisfactory rules or guidance made or issued by a

professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in subsection (4), the Commission may, after consultation as aforesaid in relation to the views of such bodies as appear to the Commission to represent the interests of accountants or other such persons and licensees, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (4); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

(6) The provisions of this section also apply in relation to former licensees and formerly authorised or registered collective investment schemes as they apply in relation to licensees and authorised or registered collective investment schemes.

Power to request meetings with auditors, actuaries, etc.

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

(a) with a view to the performance of its functions, or

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

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, designated administrators, designated trustees or custodians, associated parties or officers of, or holders of supervised roles in respect of –

(i) a licensee or former licensee, or

(ii) an authorised or registered collective investment

scheme or former authorised or registered collective investment scheme,

(the "**client**") at which the Commission may discuss any aspect of the operation, regulation, licensing, authorisation or registration of the client.

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

(a) may request the provision of such information and documents, in such form, and

(b) may put such questions and request such explanations,

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

(3) Where a client or any person upon whom a notice is served under subsection (1) fails to co-operate with the Commission or any person acting for and on behalf of the Commission when performing or attempting to perform their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in whatever form reasonably required, to any persons in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question or give any explanation, or otherwise), that failure may be taken into account by the Commission in performing its functions.

(4) For the avoidance of doubt, a meeting (and all ancillary, incidental and supplementary communications and proceedings) may be requested, arranged and conducted, and other requests and requirements may be made or

imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

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

(a) inform, or cause or permit to be informed, the client –

(i) that the notice has been given, or

(ii) of the fact or content of a meeting requested or other request made under the provisions of this section or of anything said, disclosed or otherwise done or omitted to be done pursuant to such a meeting or request, or

(b) disclose, or cause or permit to be disclosed, to any person (including the client) any information or matter which is likely to prejudice –

(i) the inquiry to which the notice relates, or

(ii) the performance by the Commission of its functions,

and if A fails to comply with such a direction A is guilty of an offence unless A can show (for the avoidance of doubt, on a balance of probabilities) –

(A) that A took all reasonable precautions and exercised all due diligence to avoid

the commission of the offence by A and by any person under A's control, or

(B) in the case of an offence under paragraph (b), that A did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance by the Commission of its functions.

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

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

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

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

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

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

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

(b) to inform another person of –

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

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

is of no effect.

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

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

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

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

(ii) in proceedings for –

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

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

(C) perjury, or

(D) perverting the course of justice.

(11) The provisions of this section –

(a) are in addition to and not in derogation from the other provisions of this Law, and

(b) for the avoidance of doubt, are without prejudice to the power of the Commission to request, arrange or conduct meetings with any person described in subsection (1) and the client or any other person.

Retention of documents.

37. (1) The following persons or entities –

(a) a licensee,

(b) an authorised or registered collective investment scheme,

(c) a person carrying on any class or description of controlled investment business –

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

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

in respect of that class or description of business,

(d) a person other than a person mentioned in paragraph (a), (b) or (c) carrying on any class or description of controlled investment business,

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

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

(i) a licensee or authorised or registered collective investment scheme, or

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

as the case may be.

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

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

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

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

(a) the form in which documents and information are to be retained and made available,

(b) the classes or descriptions of document or information to which this section does, or does not, apply,

(c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1)

must make in respect of the retention of documents and information in the event of their dissolution, winding up, cessation or deregistration, and

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

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

Skilled persons

Appointment of skilled persons.

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

(a) in the interests of –

(i) the public, or

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

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

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

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

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

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

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

(3) A person appointed as a skilled person –

(a) must, if appointed by the inspected person, be nominated or approved by the Commission, and

(b) must appear to the Commission to have the qualifications, skill and resources necessary to enable the skilled person to conduct the investigation, and to make the report, in question, [and]

[(c) may, for the avoidance of doubt, be an officer or servant of the Commission].

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

(a) a licensee,

(b) an authorised or registered collective investment scheme,

(c) ...

(d) ...

(e) ...

(f) ...

(g) a person other than a person mentioned in [paragraph (a) or (b)] carrying on any class or description of controlled investment business, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(h) ...

(i) ...

[(j) a person who performs any function for or on behalf of –

(i) a licensee or an authorised or registered collective investment scheme, or

(ii) a person acting for or on behalf of a licensee or an authorised or registered collective investment scheme,

in relation to controlled investment business, including, without limitation, a person who is an auditor of a licensee or an authorised or registered collective investment scheme, or]

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

(5) ...

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

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

(b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be an inspected person of that class or description, unless in any particular case the Commission directs otherwise with the prior written

authority of not less than two ordinary members of the Commission.

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

[...]

(7) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensee, authorised or registered collective investment scheme or other person or entity of a class or description of inspected person referred to in subsection (4), the powers may continue to be exercised in respect of them after –

(a) the date of revocation, suspension, expiration or surrender of their licence, authorisation or registration, or, as the case may be,

(b) the date on which that person or entity ceased to be an inspected person of that class or description.

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

(a) shall produce to a skilled person, at such time and place and in such form and manner as the skilled person may require, all documents in the custody or power of the inspected person or person so described and relating to

the inspected person; and the skilled person may take copies of or extracts from any documents produced under this paragraph,

(b) shall attend before a skilled person at such time and place as the skilled person may require and answer such questions and give such explanations as the skilled person may put to or require of the inspected person or person so described in relation to the inspected person, and

(c) otherwise shall give a skilled person all assistance in connection with the investigation which the inspected person or person so described is reasonably able to give.

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

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

(b) a person appointed as a skilled person pursuant to the provisions of the regulatory Laws in respect of such an inspected person,

(c) a person appointed to make a report under section 3(3)(a) of this Law, section 7(1)(b) or 8 of the

Enforcement Powers Law, section 5(5) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, [section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,] section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such an inspected person, and

(d) in the case of an authorised or registered collective investment scheme (and without prejudice to paragraphs (a), (b) and (c)) –

(i) a person who is or has been an officer, designated administrator or designated trustee or custodian of the scheme,

(ii) a person who is a licensee and who is carrying on a restricted activity in connection with the scheme, and

(iii) a person who is an associated party of the scheme.

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

(11) A person who without reasonable excuse –

(a) contravenes any provision of subsection (8), or

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

is guilty of an offence.

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

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

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

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

(ii) in proceedings for –

(A) an offence under subsection (11) or section 109(1) of the Enforcement Powers Law (but only in relation to a requirement imposed by or under this section),

(B) some other offence where, in giving evidence, A makes a statement inconsistent with it, but the statement is

only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

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

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

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

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

(17) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) may be recovered by the Commission

from an inspected person as a civil debt except where and to the extent that the court is satisfied that –

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

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

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

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

NOTE

In section 38, first, subsection (3)(c) and the word in square brackets immediately after subsection (3)(b) were inserted, second, paragraphs (c), (d), (e), (f), (h) and (i) of subsection (4) were repealed, third, the words in square brackets in subsection (4)(g) and, fourth, subsection (4)(j) were both substituted, fifth, subsection (5) and, sixth, the words omitted in square brackets in subsection (6) were both repealed and, seventh, the words in square brackets in subsection (9)(c) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, respectively paragraph 4(6), paragraph 4(7)(a), paragraph 4(7)(b), paragraph 4(7)(c), paragraph 4(8), paragraph 4(9) and paragraph 4(10), with effect from 1st January, 2023.

Supervised roles

Supervised roles.

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

(a) a director,

(b) a controller,

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

(d) a money laundering reporting officer,

(e) a money laundering compliance officer, or

(f) a compliance officer,

shall be deemed for the purposes of this Law to be the holder of a **"vetted supervised role"** in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 40.

(2) A person who, in relation to a body, is appointed as or otherwise becomes the holder of any such position, interest or role as the Committee may specify by regulation as being an approved supervised role for the purposes of this Law shall be deemed for those purposes to be the holder of an **"approved supervised role"** in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 41.

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

(a) a significant shareholder,

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

(i) otherwise than as a chief executive, to exercise, under the immediate authority of a director or partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership), day-to-day managerial functions in relation to controlled investment business in respect of which the body is or will be licensed,

(ii) to any other role in order to enable the body to fulfil the requirements of paragraph 3 of Schedule 4 (business to be directed by at least two individuals),

but not including a person who falls into any other category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection,

(c) a company secretary,

shall be deemed for the purposes of this Law to be the holder of a **"notified supervised role"** in respect of that body, and the appointment to or acquisition of the role shall be notified to the Commission in accordance with the provisions of section 42.

(4) The Committee may by regulation amend this section so as to

add to, remove or vary the positions, interests or roles included in each category of supervised role set out in subsections (1), (2) and (3).

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

Notification of holding of vetted and approved supervised roles, etc

Notification of and objection to holders of vetted supervised roles.

40. (1) A person (**"A"**) shall not become the holder of a vetted supervised role in respect of a licensee unless –

(a) A or the licensee has notified the Commission in writing of the intention that A should become the holder of such a role, and

(b) the Commission has notified A or the licensee in writing that there is no objection to A becoming the holder of such a role,

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

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

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

(b) such fee as may be prescribed by regulations under section 23;

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

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

(a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of a vetted supervised role of the description in question in respect of the licensee,

(b) that the interests of investors or clients [or potential investors or clients] of the licensee would not in any other manner be threatened by that person becoming the holder of a vetted supervised role of that description, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee

as the holder of a vetted supervised role of the description in question –

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

(A) in relation to that licensee, and

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

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

(4) A notice of objection under this section shall (without prejudice to the provisions of section 55) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

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

NOTE

In section 40, the words in square brackets in subsection (3)(b) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(11), with effect from 1st January, 2023.

Notification of and objection to holders of approved supervised roles.

41. (1) A person (**"B"**) shall not become the holder of an approved supervised role in respect of a licensee unless –

(a) B or the licensee has notified the Commission in writing of the intention that B should become the holder of such a role, and

(b) the Commission has notified B or the licensee in writing that there is no objection to B becoming the holder of such a role.

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

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

(b) such fee as may be prescribed by regulations under section 23;

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

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

(a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of an approved supervised role of the description in question in respect of the licensee,

(b) that the interests of investors or clients or potential investors or clients of the licensee would not in any other manner be threatened by that person becoming the holder of an approved supervised role of that description, or

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

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

(A) in relation to that licensee, and

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

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

(4) A notice of objection under this section shall (without prejudice to the provisions of section 55) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

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

Notification of change of holder of supervised role.

42. (1) Subject to the provisions of subsection (4), and subject also to the provisions of any rules made by the Commission under Part III of this Law, where any person becomes or ceases to be the holder of a supervised role in respect of a licensee, the licensee shall give notice in writing to the Commission of the fact.

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

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

(a) such information and documents as the Commission may require, and

(b) such fee as may be prescribed by regulations under section 23;

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

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

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

Auditors

Appointment of auditors.

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

(2) A licensee making an appointment under this section shall immediately give the Commission written notice stating –

(a) the date of the appointment, and

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

and if an appointment under this section comes to an end the licensee shall immediately give the Commission written notice and explanation of the fact, giving the name of the person whose appointment has come to an end.

(3) Without prejudice to the provisions of subsection (2), a licensee which is a company shall immediately give written notice and explanation to the Commission –

(a) if the licensee proposes to give special notice to its members of a resolution removing an auditor before the expiration of the auditor's term of office,

(b) if the licensee gives notice to its members of a resolution replacing an auditor at the expiration of the auditor's term of office, or

(c) if a person ceases to be an auditor of the licensee otherwise than pursuant to such a resolution.

(4) An auditor of a licensee appointed for the purposes of or in accordance with the provisions of any enactment in force in the Bailiwick or any part thereof, including this Law, shall immediately give written notice and explanation to the Commission if the auditor –

(a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of the auditor's term of office, or

(b) signs a qualified audit report on the accounts of the licensee,

and a notice under paragraph (a) shall contain –

(i) a statement to the effect that there are no circumstances connected with the auditor ceasing to be auditor which the auditor considers should be brought to the attention of the Commission, or

(ii) if there are any such circumstances, a report of them.

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

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

(a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of the auditor's term of office, or

(b) signs a qualified audit report on the accounts of the former licensee,

by reason of any fraud of –

(i) the former licensee, or

(ii) any holder of a supervised role in respect of it or any of its employees,

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

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

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

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

PART IV
EXEMPT AND UNLICENSED PERSONS

Exempt persons.

44. (1) Subject to the provisions of subsection (4), the provisions of section 1 of this Law do not apply to any activity carried on by –

(a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,

(b) the Royal Court, the Court of Alderney or the Court of the Seneschal,

(c) a person other than a Bailiwick body or an individual ordinarily resident in the Bailiwick if that person –

(i) carries on that activity in or from within the Bailiwick in a manner in which that person is permitted to carry it on in or from within, and under the law of, a designated jurisdiction which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to investors,

(ii) has that person's main place of business in that jurisdiction and does not carry on any restricted activity from a permanent place of business in the Bailiwick,

(iii) is recognised as a national of that jurisdiction by [the law of that jurisdiction], and

(iv) has given written notice to the Commission of the date from which that person intends to carry on that activity in or from within the Bailiwick and complied with the requirements applicable under section 3(1) to an applicant for a licence,

(d) a person, other than a Bailiwick body or an individual ordinarily resident in the Bailiwick, where that activity

consists of the promotion of controlled investments to licensees or to any person licensed to carry on business under any of the regulatory laws referred to in paragraphs (a) to (d) of the definition of **"regulatory Laws"** in section 79, and that person –

(i) carries on the activity in or from within the Bailiwick in a manner in which that person is permitted to carry it on in or from within, and under the law of, a designated jurisdiction which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to investors,

(ii) has that person's main place of business in that jurisdiction and does not carry on any restricted activity from a permanent place of business in the Bailiwick,

(iii) is recognised as a national of that jurisdiction by that person's law, and

(iv) has given written notice to the Commission of the date from which that person intends to carry on that activity in or from within the Bailiwick, or

(e) a person acting as the servant or agent of another person (**"the principal"**) if the principal –

(i) is a licensee, or is exempt from section 1 by

virtue of any other paragraph of this subsection,

(ii) is responsible, under the terms of the principal's agreement with that servant or agent, for that activity of that servant or agent, and

(iii) has complied with the requirements of any rules made under section 15(2)(d), or

(f) such other person or entity as the States may by Ordinance exempt from those provisions.

(2) Subject to the provisions of subsection (4), the provisions of section 7 of this Law do not apply to the carrying on by a licensee of a restricted activity in connection with a collective investment scheme if –

(a) the scheme is authorised under the law of a designated jurisdiction which, in the opinion of the Committee, affords in relation to schemes of that class or description adequate protection to investors,

(b) the activity is carried on in accordance with the requirements subject to which it may lawfully be carried on in that designated jurisdiction.

(3) In this section **"designated jurisdiction"** means a jurisdiction designated from time to time by regulations made by the Committee under this section; and section 22 and section 71 apply in relation to any regulations so made as they apply in relation to regulations made under Part III.

(4) The States may by Ordinance limit the extent of any exemption

conferred by or under this section.

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

(a) a person, or

(b) a transaction or activity carried out by a person,

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

NOTES

In section 44, the words in square brackets in subsection (1)(c)(iii) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(12), with effect from 1st January, 2023.

The following Regulations have effect as if made under section 44:

Investor Protection (Designated Countries and Territories) Regulations, 1989;
Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992;
Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015;
Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017.

Power to extend other requirements.

45. The States may by Ordinance provide that any provision of this Law which is expressed to apply to or in respect of licensees, authorised or registered collective investment schemes or any other class or description of person or entity (or their respective officers, employees or designated administrators or designated

trustees or custodians or the holders of supervised roles in respect of them) shall apply also, subject to such exceptions, adaptations and modifications as the States think fit, to or in respect of –

(a) any other person or entity which carries on controlled investment business or the business of a collective investment scheme, including a person or entity which would otherwise be exempt from the provisions of this Law by virtue of section 44, or

(b) any other person or entity of a class or description specified in the Ordinance (including, for the avoidance of doubt and without limitation, a licensee or authorised or registered collective investment scheme),

or, as the case may be, their officers, employees or designated administrators or designated trustees or custodians or the holders of supervised roles in respect of them.

PART V
MISCELLANEOUS AND SUPPLEMENTARY

Civil proceedings

Agreements made by or through persons in breach of section 1.

46. (1) Subject to the provisions of subsection (3), a controlled investment agreement –

(a) which is entered into by a person in the course of carrying on controlled investment business in contravention of section 1, or

(b) which is entered into –

(i) by a licensee or by a person who is exempted in respect of the controlled investment business in the course of which that person enters into the agreement, but

(ii) in consequence of anything said or done by a person in the course of carrying on controlled investment business in contravention of section 2,

is unenforceable against the other party; and that party is entitled to recover any money paid, or other property transferred, by that party under the agreement, together with compensation for any loss sustained by that party in consequence of such payment or transfer.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the appropriate court may, on the application of either party, determine.

(3) The appropriate court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under it to be retained, if it is satisfied –

(a) in a case within paragraph (a) of that subsection –

(i) that the person mentioned in that paragraph (**"A"**) reasonably believed that A's entering into the agreement did not constitute a contravention of section 1, and

(ii) that in A's dealings with the other party A has acted substantially in accordance with the rules and regulations applicable to licensees made under the provisions of Part III of this Law,

(b) in a case within paragraph (b) of subsection (1), that the person mentioned in subparagraph (i) of that paragraph neither knew nor ought to have known that the agreement was entered into as mentioned in subparagraph (ii) of that paragraph.

(4) Where a person (**"B"**) elects not to perform an agreement which by virtue of this section is unenforceable against B, or by virtue of this section recovers money paid or other property transferred by B under an agreement, B shall repay any money and return any other property received by B under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party, references to that property in subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of the provisions of this Law does not make an agreement illegal or invalid to any greater extent than is provided in this section or in regulations made under section 26(2).

(7) For the purposes of this section the **"appropriate court"** means, in relation to any matter, the court in the Bailiwick having jurisdiction under the law for the time being in force to determine or otherwise deal with the matter.

Actions for damages.

47. (1) Without prejudice to the provisions of sections 46 and 47 of the Enforcement Powers Law, a contravention of any provision of–

(a) directions, rules or regulations made under the provisions of this Law, or

(b) section 7 of this Law,

is actionable in the appropriate court, as a breach of statutory duty by the person who has contravened that provision, at the suit of any person who has suffered loss or been otherwise adversely affected as a result of that contravention.

(2) For the purposes of this section the **"appropriate court"** means, in relation to any matter, the court in the Bailiwick having jurisdiction under the law for the time being in force to determine or otherwise deal with the matter.

Disclosure of information

Restrictions on disclosure of information.

48. (1) Subject to the provisions of section 49 –

(a) no person who under the provisions of or for the purposes of this Law receives information relating to the business, property or affairs of any person,

(b) no person who obtains any such information directly or indirectly from a person who has so received it,

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

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

Cases where disclosure is permitted.

49. Section 48 does not preclude –

(a) the disclosure of –

(i) information which at the time of disclosure is or has already been made available to the public from other sources, or

(ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,

(b) the disclosure of information for the purpose of enabling or assisting –

(i) the Commission, or

(ii) any body established by Ordinance under section 48 of the Banking Supervision Law or section 84 of the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders,

to perform its functions,

(c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee, or an authorised or registered collective investment scheme or former authorised or registered collective investment scheme, if it appears to the Commission that the disclosure would enable or assist the Commission to perform its functions or would otherwise be in the interests of the public or the reputation of the Bailiwick as a finance centre,

(d) where, in order to enable or assist it to perform its functions, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation (actuarial or otherwise) or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that that person is properly informed as to the matters on which the advice is sought,

(e) the disclosure by the Commission of information in the interests of the public or the reputation of the Bailiwick as a finance centre,

(f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to perform its functions,

(g) the disclosure of information in compliance with, or for

the purposes of enabling or assisting a person to comply with, any requirement imposed by or under the provisions of this Law or any other enactment,

(h) the disclosure of information –

(i) for the purposes of the investigation, prevention or detection of crime, or

(ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under the provisions of this Law or otherwise,

(i) the disclosure of information in connection with any other proceedings, enforcement action or sanction (civil, criminal or administrative) arising out of or under the provisions of this Law or any other enactment,

(j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of the professional duties of –

(i) an auditor of –

(A) a licensee or former licensee, or

(B) an authorised or registered collective investment scheme or former authorised

or registered collective investment scheme,

(ii) a person appointed to make a report under section 3(3)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 5(5) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, [section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,] section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or

(iii) a person appointed as a skilled person pursuant to the provisions of section 38 of this Law or the corresponding provisions of the regulatory Laws,

(k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of –

(i) information obtained under the provisions of section 33 or 38 of this Law or sections 7 to 13 of the Enforcement Powers Law, or

(ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,

(l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,

(m) the disclosure of information to a person or entity responsible for a scheme for compensating clients or investors (whether in the Bailiwick or elsewhere) –

(i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to perform its functions, and

(ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission, or

(n) the disclosure of information by the Commission for the purposes or in the circumstances described in –

(i) section 21(2) of the Financial Services Commission Law,

(ii) section 45 of the Banking Supervision Law,

(iii) section 39 of the Regulation of Fiduciaries Law,

[(iiia) section 70 of the Lending, Credit and Finance Law,]

(iv) section 80 of the Insurance Business Law,

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

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

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

(i) the Registrar of Companies,

(ii) the Alderney Registrar,

(iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003),

(iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,

(v) the Principal Ombudsman appointed under section 4 of that Law,

(vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by

section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),

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

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

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

to perform their respective functions.

NOTE

In section 49, first, the words in square brackets in paragraph (j)(ii) and, second, paragraph (n)(iiia) were both inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, respectively paragraph 4(13) and paragraph 4(14), with effect from 1st January, 2023.

Information supplied to Commission by relevant supervisory authority.

50. (1) This section applies, to the exclusion of section 48, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) –

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

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

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

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

(a) the name of any person to whom it proposes to disclose the information, and

(b) an accurate description of that person's functions.

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

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

(a) for the purposes or in the circumstances described in section 49(h), or

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

(6) No person who –

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

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

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

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

Royal Court to take Commission's undertakings into account.

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

(a) take into account –

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

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

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

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

(i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and

(ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it.

Annual return

Annual return of licensee and authorised or registered collective investment scheme.

52. (1) The Commission may make rules requiring the submission by

licensees and authorised or registered collective investment schemes to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

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

(a) for the purposes of enabling the Commission to perform its functions,

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

(c) in the interests of –

(i) the public, or

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

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 76).

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

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

(b) an up to date business plan,

(c) a 12 month financial forecast,

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

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

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

(e) the names of and other prescribed particulars in respect of –

(i) the holders of supervised roles in respect of, or the officers or employees of, a licensee, or

(ii) the holders of supervised roles in respect of, or the officers or employees of, or the designated administrator or designated trustee or custodian of, an authorised or registered collective investment scheme,

(f) the number of staff employed,

(g) the number of investors and clients, whether in total or whether in respect of different classes or descriptions of controlled investment business,

(h) the licensee's or authorised or registered collective investment scheme's estimate of the value of assets under administration,

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

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

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

(b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,

(c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,

(d) the provision of reports, in such form as may be

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

(e) the payment of any fees prescribed by regulations under section 23 in respect of the submission of annual returns,

(f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,

(g) the service of notices,

(h) the submission of a single or composite return for licensees or authorised or registered collective investment schemes which also hold a licence under any of the regulatory Laws.

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

NOTE

The following Rules have been made under section 52:

Financial Crime Returns Rules.

Information and educational material

Publication of information and material as to controlled investments, etc.

53. The Commission shall prepare and publish, in such form and manner as it thinks fit and subject to such charges (if any) as it may decide to levy to cover the costs of preparation and publication, such information and documents as it considers necessary or desirable in the interests of investors and the public in general containing material (educational or otherwise) in relation to –

(a) controlled investments and other classes or descriptions of investments, and

(b) the carrying on of controlled investment business.

Representations, notice of decisions and appeals

Representations concerning proposed decisions of Commission.

54. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 57, other than a decision to serve a notice under section 33 or 40, the procedure prescribed in this section shall be followed.

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

(a) stating that the Commission is proposing to make the decision,

(b) stating the terms of and the grounds for the proposed decision,

(c) setting out particulars of or accompanied by –

(i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

(ii) any notice proposed to be served,

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

(e) containing or accompanied by, in accordance with the provisions of section 56(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 56(2)), and

(f) giving particulars of the right of appeal which would be exercisable under section 57 if the Commission were to make the proposed decision.

(3) Where –

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

in the case of any person, or

(b) any proposed order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as –

(i) an officer, employee or auditor, or holder of a supervised role, or

(b) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal which would be exercisable under section 57 if the Commission were to make the proposed decision.

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

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

(a) any representations made in response to a notice served under this section, or

(b) any failure or omission to make any such representations.

(6) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

Notice of decisions of Commission.

55. (1) Where the Commission (having taken into account, where appropriate, any representations made by the person concerned) makes a decision in respect of which a right of appeal is conferred by section 57, notice in writing of the decision –

(a) shall be served by the Commission on the person concerned,

(b) shall state the terms of and the grounds for the decision,

(c) shall set out particulars of or be accompanied by –

(i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or

(ii) any notice to be served,

(d) shall contain or be accompanied by, in accordance with the provisions of section 56(1), a statement of the reasons for the decision (but subject to the provisions of

section 56(2)), and

(e) shall give particulars of the right of appeal conferred by section 57;

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

(2) Where –

(a) a ground for a decision notice of which is required to be served under subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) an order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as –

(i) an officer, employee or auditor, or holder of a supervised role, or

(ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 57.

Disclosure of reasons for decisions of Commission.

56. (1) When the Commission serves notice on a person –

(a) under section 55(1) or (2) of a decision in respect of which a right of appeal is conferred by section 57, or

(b) under section 54(2) or (3) stating that the Commission is proposing to make such a decision,

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

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

(a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),

(b) co-operation or relations with investigatory, regulatory or prosecuting authorities, whether in the Bailiwick or elsewhere, or

(c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 57.

Appeals to Royal Court against decisions of Commission.

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

(a) under section 4(1)(b), to refuse an application for a licence,

(b) under section 5, to impose any condition in respect of a licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,

(c) to refuse to vary or rescind any condition so imposed,

(d) under section 6 –

(i) not to allow the surrender of a licence to be withdrawn, or

(ii) not to give consent to the surrender of a licence,

(e) under section 8(4), to refuse an application for a declaration that a collective investment scheme is an authorised or registered collective investment scheme of the class specified in the application,

(f) under section 9, to impose any condition in respect of an authorisation or registration (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,

(g) to refuse to vary or rescind any condition so imposed,

(h) under section 11 –

(i) not to allow the surrender of the authorisation or registration of a collective investment scheme to be withdrawn, or

(ii) not to give consent to the surrender of the authorisation or registration of a collective investment scheme,

(i) under section 30, to give any direction or to vary or rescind any direction so given,

(j) to refuse to vary or rescind any direction so given,

(k) under section 33, to serve a notice under that section,

(l) under section 38, to appoint or require the appointment of a skilled person,

(m) under section 40 (notification of vetted supervised roles), to serve a notice of objection,

(n) under section 41 (notification of approved supervised roles), to serve a notice of objection,

(o) to omit, pursuant to the provisions of section 56(2), any matter from a statement of reasons provided pursuant to section 56(1),

(p) for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64 of the Enforcement Powers Law, or

(q) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where –

(a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as –

(i) an officer, employee or auditor, or holder of a supervised role, or

(ii) an officer, or a designated administrator or designated trustee or custodian, of an authorised or registered collective investment scheme,

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

(3) The grounds of an appeal under this section are that –

(a) the decision was *ultra vires* or there was some other error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(4) An appeal under this section shall be instituted –

(a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and

(b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

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

(a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court

may direct), or

(b) make such other order as the Royal Court considers just,

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

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

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

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

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

(a) subsection (1)(b),

(b) subsection (1)(d)(i),

(c) subsection (1)(f),

(d) subsection (1)(h)(i),

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d O.R.C. No. IV of 2007.

(e) subsection (1)(i),

(f) subsection (1)(k), or

(g) subsection (1)(l),

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

This subsection is without prejudice to section 54(6).

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(o) to omit, pursuant to the provisions of section 56(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and, unless the Royal Court orders otherwise, the information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing the appellant.

Appeals from Royal Court to Court of Appeal.

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

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961[e] ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal

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[e] Ordres en Conseil Vol. XVIII, p. 315.

to give leave to appeal under Part II of that Law.

Restriction on successive challenges.

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

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

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

(c) either –

(i) an appeal under section 57 relating to a previous such application in respect of that person has been commenced but not yet determined, or

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

(A) a previous such application in respect of

that person has been determined by the Commission, or

(B) an appeal under section 57 relating to a previous such application in respect of that person has been determined.

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

(a) a decision under section 5 to impose, vary or rescind any condition in respect of a licence,

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

(c) a decision under section 9 to impose, vary or rescind any condition in respect of the authorisation or registration of a collective investment scheme,

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

(e) a decision under section 30 to give any direction or to vary or rescind any direction so given,

(f) a decision to refuse to vary or rescind any direction so given,

(g) a decision to appoint or require the appointment of a skilled person under section 38,

(h) a decision to serve notice of objection under section 40 (objection to holders of vetted supervised role),

(i) a decision to serve notice of objection under section 41 (objection to holders of approved supervised role), or

(j) an order or other decision of a class or description specified by regulations of the Committee.

Power to exclude liability

Power to exclude liability.

60. (1) The States may by Ordinance provide that no liability shall be incurred –

(a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,

(b) by the Commission,

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

(d) by any member, officer or servant of any of the aforesaid, or

(e) by any other person or entity specified in the Ordinance,

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

(2) An Ordinance under subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000[f].

NOTE

The following Ordinances have effect as if made under section 60:

Protection of Investors (Limitation of Liability) Ordinance, 1990;
Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) Ordinance, 2014;
Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017.

Matters Commission must have regard to

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

61. (1) In performing its functions under the provisions of this Law –

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

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

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

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

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

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

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

(ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law or the Financial Services Commission Law,

(iii) any matter to which it may have regard under the provisions of this Law when performing the function in question, and

(iv) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action, duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction,

order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any licensee, authorised or registered collective investment scheme, holder of a supervised role or other person or entity, and

(c) the Commission must have regard to the objectives of –

(i) protecting the public and the reputation of the Bailiwick as a finance centre,

(ii) ensuring that markets for controlled investments are fair, efficient and transparent, and

(iii) reducing risks to the financial system in the Bailiwick.

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

Criminal proceedings

Penalties.

62. (1) A person guilty of an offence under section 42(5) or 43(7) or (8) is liable –

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

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

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

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

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

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

Criminal proceedings against unincorporated bodies.

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

(a) in the case of –

(i) a partnership, any partner thereof, but subject to

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

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

the provisions of subparagraph (ii),

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

(b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or

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

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

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

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

Criminal liability of directors etc.

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

(a) in the case of a company, any director, controller, secretary or other similar officer thereof,

(b) in the case of a limited partnership with legal personality, any general partner,

(c) in the case of a limited liability partnership, any member,

(d) in the case of a foundation, any foundation official, or

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

the person referred to in the appropriate paragraph above as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

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

Jurisdiction.

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

Supplementary

Service of notices and documents.

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

(a) an individual (**"A"**), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of

business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

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

(f) subject to the provisions of section 76, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

(g) a licensee, or an applicant for a licence, or a person to whom section 44(1)(c) or (d) applies, by being given to or served on the licensee, applicant or person in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, the address in the Bailiwick of the licensee, applicant or person furnished pursuant to section 3(1)(e),

and in this section –

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

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

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

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

(B) a document transmitted to which is

likely to come to the attention of the person concerned,

(iv) **"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

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

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

(a) an address for service within the Bailiwick, or

(b) an electronic address at which the service of documents may be effected on that person,

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

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

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

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

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

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

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

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

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

(a) in the case of a document sent to an address in the

United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

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

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

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

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

(a) addressed to the person concerned, and

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

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

NOTE

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.

Power of States to amend Law by Ordinance.

68. (1) The States may by Ordinance –

(a) amend Part I or II or sections 32 to 37, 54 to 59, 62 or 80, where it appears to the States to be necessary or expedient to do so for the purpose of –

(i) enabling the Commission more effectively to perform any of its functions,

(ii) enhancing or protecting the reputation or economic interests of the Bailiwick,

(iii) improving or enhancing the investigation, prevention or detection of crime,

(iv) facilitating the instigation of, or otherwise for the purposes of, any criminal, civil, administrative or regulatory proceedings,

(v) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,

(vi) discharging any international obligation to which the Bailiwick is subject, or

(vii) assisting, in the interests of the public or otherwise, any relevant supervisory authority, and

(b) make such additional provision as they think fit for the purposes of carrying the provisions of this Law into effect.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

Power to implement EU measures on markets in financial instruments.

69. (1) The States may by Ordinance make such provision as they think fit, including provision amending this Law, the regulatory Laws or any other enactment, for the purpose of implementing in the Bailiwick or any part thereof –

(a) the provisions of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("**MiFID II**"), and

(b) the provisions of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("**MiFIR**").

(2) An Ordinance under this section may, without limitation, establish any scheme considered by the States to be desirable or expedient for the protection and compensation of investors, customers and clients in cases where licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their business, being business regulated by the

provisions of this Law.

(3) Without limitation, an Ordinance made by virtue of subsection (2) may make provision in respect of all or any of the following matters –

(a) the establishment of a fund for the protection and compensation of investors, customers and clients,

(b) the holding, management and application of the said fund,

(c) the making of contributions to the fund and the levying thereof from licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes,

(d) the costs, expenses and other items which are to be chargeable to the fund,

(e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made,

(f) the description and amount of the investments, deposits or other liabilities, and the description of the creditors, to be protected,

(g) the liability of licensees, former licensees, authorised or registered collective investment schemes or former authorised or registered collective investment schemes in respect of compensation payments,

(h) the payment or repayment of claims, contributions or other monies, or any description thereof,

(i) the tax treatment of contributions and repayments thereof and of the income of the fund,

(j) the crediting of monies and income to the fund,

(k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,

(l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body, and

(m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights,

including, with appropriate modifications, provision corresponding to that set out in the preceding paragraphs of this subsection in respect of the regulatory Laws and matters falling within them.

(4) In this section –

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

"customers" includes depositors and investors (within the meaning of the Banking Supervision Law), [customers and clients (within the meaning of the Lending, Credit and Finance Law),] clients (within the meaning of the Regulation of Fiduciaries Law) and policyholders and clients (within the meaning of the Insurance Business Law and the Insurance Managers and Intermediaries Law),

"implementation", in relation to the provisions of MiFID II and MiFIR, includes the enforcement or enactment of the provisions, and the securing of the administration, execution, recognition, exercise or enjoyment of the provisions, in or under domestic law, and

"the provisions" of MiFID II and MiFIR include –

(a) any provision contained in or arising under them, and

(b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under them.

(5) The powers conferred by this section are in addition to and not in derogation from the provisions of –

(a) the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, and

(b) section 18 (indemnity and compensation rules).

NOTE

In section 69, the words in square brackets in subsection (4) were inserted by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, paragraph 4(15), with effect from 1st January, 2023.

Power to make Ordinances in respect of credit rating agencies.

70. (1) The States may by Ordinance make such provision as they think fit in respect of the regulation, supervision, licensing or registration of credit rating agencies and the activities thereof including, without limitation, provision implementing the provisions of the IOSCO principles.

(2) An Ordinance under this section may, without limitation, make provision, subject to such exceptions, adaptations and modifications as the States think fit, corresponding to that which is made by or which may be made under the provisions of this Law and the regulatory Laws.

(3) In this section –

"credit rating" has the meaning given by article 3(1)(a) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ("credit rating means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories"),

"credit rating agency" has the meaning given by article 3(1)(b) of that Regulation ("credit rating agency means a legal person whose occupation includes the issuing of credit ratings on a professional basis"),

"implementation", in relation to the provisions of the IOSCO

principles, includes the enforcement or enactment of the provisions, and the securing of the administration, execution, recognition, exercise or enjoyment of the provisions, in or under domestic law,

"IOSCO principles" means the International Organisation of Securities Commissions Objectives and Principles of Securities Regulation,

"the provisions" of the IOSCO principles include –

(a) any provision contained in or arising under them, and

(b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under them.

Ordinances, regulations, rules, codes and guidance, etc – general.

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

(a) for the purpose of carrying the provisions of this Law into effect, and

(b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

(2) The States may by Ordinance empower –

(a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by

the Ordinance) to make regulations, and

(b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (3)(b)) provision amending this Law.

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

(a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions as the case may be, hereunder,

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

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies,

penalties, sanctions and other consequences (but subject to the provisions of subsection (4)),

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

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

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

(a) to provide for offences to be triable only on indictment,

(b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

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

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

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

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

(6) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 83), consult –

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

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

Sark,

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

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 83) ceases to have effect –

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

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

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

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

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

(9) In this section –

(a) **"approval date"**, in relation to an Ordinance, means

the date of its approval by the States of Deliberation, and

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

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

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

72. Regulations made under the provisions of this Law –

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

(b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,

(c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next

meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

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

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

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

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

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

(a) as may be prescribed by regulations under section 23, or

(b) if no such fee is so prescribed, as it reasonably thinks

fit,

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

Making and effect of contravention of rules.

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

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

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

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

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

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

(a) the Commission, in the performance of its functions,

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

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

Regulations and rules are statutory instruments.

75. For the avoidance of doubt, regulations and rules under the provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949[i], the provisions of which shall apply accordingly.

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

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

(a) shall be in such electronic form, and shall be submitted by such electronic means and to such electronic address, as the Commission may require, whether in any particular case or class of cases or generally, or

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i Recueil d'Ordonnances Tome X, p. 16.

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

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

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

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000[j], the Electronic Transactions (Alderney) Law, 2001[k] and the Electronic Transactions (Sark) Law, 2001[l].

Verification of information.

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

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j Order in Council No. VIII of 2000.

k Order in Council No. XXVI of 2001.

l Order in Council No. X of 2001.

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

Evidence.

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

(a) that a particular person is or is not a licensee or former licensee or was or was not a licensee or former licensee at a particular time,

(b) that a particular collective investment scheme is or is not an authorised or registered collective investment scheme or was or was not an authorised or registered collective investment scheme at a particular time,

(c) the date on which a particular person obtained or ceased to hold a licence,

(d) the date on which a particular collective investment scheme became or ceased to be an authorised or registered collective investment scheme,

(e) the terms of any conditions imposed in respect of a particular licence, authorisation or registration,

is admissible in evidence.

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

Interpretation.

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

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

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

"Alderney company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994,

"Alderney Greffier" means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law, 2004[m],

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

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

"ancillary vehicle": see section 20,

"appointed Laws" means –

(a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,

(b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

(c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or

(f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

"appointed person": see section 33(1),

"appropriate court": see sections 30(13), 46(7), 47(2) and 67(6),

"approved supervised role": see section 39(2),

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

(a) the spouse, civil partner or child of that person,

(b) a person with whom that person is living as if they were married or civil partners (a **"cohabitant"**),

(c) any body of which that person is a director,

(d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,

(e) if that person is a company –

(i) any director or employee of that company,

(ii) any subsidiary of that company, and

(iii) any director or employee of any such subsidiary,

(f) where that person is an unincorporated body, any director of that body,

(g) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power (whether in general meeting or otherwise) in relation to a company, that other person:

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

"associated party", in relation to any person, means –

(a) any person who is a partner (or fellow member, in the case of a limited liability partnership) of that person,

(b) any body of which that person is a controller,

(c) any body of which that person is a director,

(d) any body in respect of which that person holds a supervised role,

(e) where that person is a company –

(i) a holding company, subsidiary or related company of that person,

(ii) a subsidiary or related company of a holding company of that person,

(iii) a holding company of a subsidiary of that person, or

(iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is

an associated party in relation to that first-mentioned person or entity:

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

"auditor" means –

(a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008 and who is, where required by or under the provisions of this Law, authorised by the Commission to audit the accounts of licensees or authorised or registered collective investment schemes, or

(b) any other person who performs or has performed the functions of an auditor of a licensee or an authorised or registered collective investment scheme,

"authorised collective investment scheme" means a collective investment scheme declared in an authorisation issued by the Commission under section 8 to be an authorised collective investment scheme for the purposes of this Law; and **"authorisation"** and related expressions shall be construed accordingly,

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

"Bailiwick" means the Bailiwick of Guernsey,

"Bailiwick body" means –

(a) a Guernsey body, being –

(i) a Guernsey company,

(ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or

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

(b) an Alderney body, being –

(i) an Alderney company, or

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

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

"Banking Supervision Law" means the Banking Supervision (Bailiwick of Guernsey) Law, 2020[n],

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n Approved by the States of Deliberation on the 18th August, 2020.

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

"business day" means any day other than –

(a) a Saturday, a Sunday, Christmas Day and Good Friday,

(b) a day appointed as a public holiday –

(i) in relation to the Bailiwick excluding the islands of Alderney and Sark, by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958[o],

(ii) in relation to the island of Alderney, by Ordinance of the States of Alderney under the said section 1(1) or under paragraph (o) of Schedule 2 to the Government of Alderney Law, 2004[p],

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

"chief executive", in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the

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

p Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); and the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012).

directors or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

"child" includes a stepchild, an adopted child and an illegitimate child,

"civil partner" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and **"civil partnership"** shall be construed accordingly,

"closed-ended investment scheme" means a collective investment scheme under which the investors are not entitled under the terms of the scheme –

(a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or

(b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

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

"collective investment scheme" means any arrangement such as is identified and described in Category 1 in paragraph 1 of Schedule 1,

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

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

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

"company", subject to the provisions of paragraph 2(2) of Schedule 1, means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world,

"compliance officer" means an officer, appointed by a licensee or by another person or entity, with responsibility, under the terms of the officer's appointment, for independently monitoring, and reporting to the directors, partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) or chief executive on and providing guidance and making recommendations in respect of –

(a) compliance by that licensee, person or entity with –

(i) the provisions of this Law and the regulatory Laws,

(ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such

provision, and

(iii) its policies and procedures relating to corporate governance, ethics and standards of conduct, and

(b) fulfilment by that licensee, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensee, person or entity, of the applicable minimum criteria for licensing,

"contract of employment" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

"contravention" includes failure to comply,

"controlled investment": see section 1(3)(b) and Schedule 1,

"controlled investment agreement" means any agreement –

(a) for or with a view to acquiring, disposing of, subscribing for or underwriting a controlled investment,

(b) under which a person is to receive advice as to the acquisition or disposal of, subscription for or underwriting of a controlled investment or as to the exercise of the rights conferred by a controlled investment,

(c) under which arrangements are to be made with a view to another person acquiring, disposing of, subscribing for or underwriting a controlled investment, or

(d) under which a person's controlled investments are to be managed,

"controlled investment business": see section 1(3),

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

(a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,

(b) a shareholder controller or an indirect controller,

(c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary,

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961[q],

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

"designated administrator" and **"designated trustee or custodian"**

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q Ordres en Conseil Vol. XVIII, p. 315.

in relation to an authorised or registered collective investment scheme means the person designated as such by the Commission for the purposes of this Law,

"designated jurisdiction": see section 44(3),

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

"directed person": see section 30(1),

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

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

(a) in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of a copy of the information in a form –

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

(b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language:

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

"electronic address": see section 67(1)(ii),

"electronic form", in relation to the electronic storage or recording of information or documents, includes storage or recording by means of any form of information storage technology,

"electronic means", in relation to the sending of a document, includes any technology by which the document is –

(a) sent and received at its destination by means of electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and

(b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of "electronic address", "electronic form" and "electronic means",

"employee" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of

employment,

"enactment" includes any Law, Ordinance and subordinate legislation,

"Enforcement Powers Law" means the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020[r],

"entity" includes a scheme, trust, structure, arrangement and cell of a protected cell company,

"equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

"exercise", or **"control the exercise of"** voting power: for the purposes of this Law a person becomes entitled to exercise or control the exercise of voting power where that person, by any means whatsoever –

(a) becomes entitled to do so as a member of a body, or

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

"Financial Services Commission Law" means the Financial Services

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r Approved by the States of Deliberation on the 18th August, 2020.

Commission (Bailiwick of Guernsey) Law, 1987[s],

"former authorised or registered collective investment scheme" means a collective investment scheme which –

(a) does not hold and is not deemed to hold an authorisation or registration under this Law, but

(b) has previously held such an authorisation or registration or an authorisation or registration under the Protection of Investors Law, 1987,

and also includes any person or entity described in section 81(4) or (6),

"former licensee" means a person who –

(a) does not hold and is not deemed to hold a licence under this Law, but

(b) has previously held or been deemed to hold such a licence or a licence under the Protection of Investors Law, 1987,

and also includes any person described in section 81(3) or (5),

"foundation" means –

(a) a Guernsey foundation, or

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[s] Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to this enactment.

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

"foundation official" means –

(a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012[t], and

(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

"functions" includes duties, powers and privileges,

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

"general partner" means –

(a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995[u], and

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t Order in Council No. I of 2013.

u Order in Council No. XII of 1995; there are amendments not material to this enactment.

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "limited partnership", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

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

"group entity" means a body or entity carrying on controlled investment business and which is not a licensee but which is part of a group containing a licensee,

"Guernsey company" means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008,

"Guernsey foundation" means a foundation established under the Foundations (Guernsey) Law, 2012,

"Guernsey limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013[v],

"Guernsey limited partnership" means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law,

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v Order in Council No. VI of 2014.

1995 (whether with or without legal personality),

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

"holding company": see Schedule 5,

"indirect controller", in relation to a body, means a person in accordance with whose directions or instructions –

(a) any director of that body,

(b) where that body is a company, any director of any other company of which that body is a subsidiary, or

(c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or, where that body is a company, in any other company of which that body is a subsidiary) directly or indirectly which makes it possible to exercise significant influence over the management of the body,

"information" includes, for the avoidance of doubt, a signature,

"inspected person": see section 38(4),

"Insurance Business Law" means the Insurance Business (Bailiwick of Guernsey) Law, 2002[w],

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[w] Order in Council No. XXI of 2002; there are amendments not material to this enactment.

"Insurance Managers and Intermediaries Law" means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002[x],

"international agreement" means –

(a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and

(b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994[y],

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

"investment company" means a collective investment scheme under which the property in question belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading risk and giving its members the benefit of the results of the management of those funds,

"investment exchange" means a market for the buying and selling of–

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x Order in Council No. XXII of 2002; there are amendments not material to this enactment.

y Order in Council No. III of 1994.

(a) shares, debentures or securities,

(b) instruments entitling their holders to subscribe for, or certificates representing property rights in, shares, debentures or securities,

(c) contracts for property or commodity futures or contracts for differences,

(d) rights under insurance contracts the effecting and carrying out of which in the Bailiwick would constitute long term business within the meaning of the Insurance Business Law, or

(e) options to acquire or dispose of, or other rights or interest in, any investment mentioned in this definition,

"investor" means a person having any asset, right or interest (whether vested or contingent) in relation to a controlled investment,

"joint enterprise" means an enterprise into which two or more persons (**"the participators"**) enter for commercial reasons related to a business or businesses (other than controlled investment business) carried on by them; and where a participator is a company and a member of a group each other member of the group shall also be regarded as a participator in the enterprise,

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

"legal professional privilege", and communications or items subject

thereto: see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003[z],

[**"Lending, Credit and Finance Law"** means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,]

"licence" means a licence to carry on controlled investment business issued under the provisions of this Law; and **"licensed"** and **"licensee"** shall be construed accordingly,

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

"licensed insurer" means a person who is a licensee within the meaning of the Insurance Business Law (that is, a person who is a licensed insurer under that Law),

"limited liability partnership" means –

(a) a Guernsey limited liability partnership, or

(b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a Guernsey limited liability partnership,

"limited partner" means –

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z Ordres en Conseil Vol. XLIII, p. 617.

(a) in relation to a Guernsey limited partnership, a limited partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995[aa], and

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "limited partnership", a person described in paragraph (b)(ii) of that definition,

"limited partnership" means –

(a) a Guernsey limited partnership, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others (referred to in this Law as **"limited partners"**) have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or

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aa Order in Council No. XII of 1995; there are amendments not material to this enactment.

are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"liquidator" includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

"member", in respect of –

(a) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008[bb],

(b) an Alderney company, has the same meaning as in the Companies (Alderney) Law, 1994, and

(c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited Liability Partnerships (Guernsey) Law, 2013,

"minimum criteria for licensing" means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 4,

"money laundering compliance officer" means the money laundering compliance officer appointed in accordance with paragraph 15 of

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bb Order in Council No. VIII of 2008; there are amendments not material to this enactment.

Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"money laundering reporting officer" means the money laundering reporting officer appointed in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"notified supervised role": see section 39(3),

"occupational pension scheme": see paragraph 1(4) of Schedule 1,

"officer" –

(a) in relation to a company, includes a director, liquidator, manager and secretary thereof, and

(b) in relation to an authorised or registered collective investment scheme, or an applicant for a declaration that a collective investment scheme is an authorised or registered collective investment scheme, includes a director, partner, managing director, chief executive, trustee (in the case of a unit trust), member (in the case of a limited liability partnership) or general partner (in the case of a limited partnership) of that scheme or applicant,

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

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his or her jurisdiction, a member of the special constabulary of the Island of Guernsey,

(b) in relation to Alderney –

(i) a member of any police force which may be established by the States of Alderney, and

(ii) within the limits of his or her jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004,

(c) in relation to Sark –

(i) the Constable, an Assistant Constable and the Vingtenier, and

(ii) within the limits of his or her jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

"open-ended investment scheme" means a collective investment scheme under which the investors are entitled under the terms of the scheme –

(a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or

(b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

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

"other supervised manager": see section 39(3)(b),

"partner" has the same meaning as in the Partnership (Guernsey) Law, 1995[cc], and includes a general partner and limited partner of a limited partnership,

"partnership": see section 1 of the Partnership (Guernsey) Law, 1995,

"person" includes –

(a) an individual,

(b) a company,

(c) any other legal person, and

(d) an unincorporated body,

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

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

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cc Ordres en Conseil Vol. XXXVI, p. 179.

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Companies (Guernsey) Law, 2008,

"Protection of Investors Law, 1987" means the Protection of Investors (Bailiwick of Guernsey) Law, 1987[dd],

"promotion": see Schedule 2,

"prospectus" means any prospectus, notice, circular, or other document containing detailed information about an offer to the public of any controlled investment for subscription, purchase or exchange,

the **"provisions of"** this Law or any other enactment include the provisions of –

(a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and

(b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the "purposes of" this Law or any other enactment),

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dd Ordres en Conseil Vol. XXX, p. 281; there are amendments not material to this enactment.

the **"public"** means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, investors and clients and potential investors and clients (whether of any person or entity, or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, investors or clients of, in or with that body:

Provided that a controlled investment is not promoted to the public by a promotion directly communicated to an identifiable category of persons not exceeding 50 in number if those persons are in possession of sufficient information to be able to make a reasonable evaluation of any offer included in the promotion and are the only persons who may accept any such offer,

the **"purposes of"** this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "provisions of" this Law or any other enactment),

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

"recognised investment exchange" means an investment exchange which appears to the Commission to be situate in, and recognised as an investment exchange within the meaning of the law relating to investment exchanges of –

(a) any member State of the European Union,

(b) any jurisdiction prescribed by rules of the Commission,

or

(c) any jurisdiction specified in writing by the Commission in any particular case or for any particular purpose,

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

"registered collective investment scheme" means a collective investment scheme declared in a registration issued by the Commission under section 8 to be a registered collective investment scheme for the purposes of this Law, and **"registration"** and related expressions shall be construed accordingly,

"Registrar of Companies" means the holder for the time being of the office established under section 495(1) of the Companies (Guernsey) Law, 2008[ee],

"Regulation of Fiduciaries Law" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020[ff],

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

ff Approved by the States of Deliberation on the 18th August, 2020.

"regulations" means regulations made under the provisions of this Law,

"regulatory Laws" means –

(a) the Banking Supervision Law,

(b) the Regulation of Fiduciaries Law,

[(ba) the Lending, Credit and Finance Law,]

(c) the Insurance Business Law,

(d) the Insurance Managers and Intermediaries Law,

(e) the Financial Services Commission Law,

(f) ...

(g) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,

(h) the Enforcement Powers Law,

(i) any other enactment prescribed for the purposes of this Law by regulations of the Committee,

"related company", in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution

to the company in question's own activities by the exercise of any control or influence arising from that interest, and for the purposes of this Law –

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,

(b) where –

(i) a company holds a qualifying capital interest in another company, and

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above under "related company", unless the contrary is shown, and

(c) in paragraph (b)(ii) **"relevant shares"** means, in relation to any company, any such shares in that company as are mentioned in paragraph (a):

Provided always that the Committee may by regulation amend the definitions of "related company", "qualifying capital interest" and "relevant shares",

"relevant electronic address": see section 67(1)(iii),

"relevant document": see section 13(3),

"relevant person": see section 32(1),

"relevant supervisory authority" means –

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

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

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

including functions in respect of the Bailiwick,

(b) any international organisation, that is to say, any organisation, community or body –

(i) of which the United Kingdom or any other sovereign power is a member, or

(ii) which is established under any international agreement,

(c) a self-regulatory organisation, or

(d) a resolution authority, that is to say, a public authority

that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

"restricted activity": see section 1(3)(c) and Schedule 2,

"Royal Court" means the Royal Court sitting as an Ordinary Court and for the purposes of this Law –

(a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and

(b) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto,

"rules" means rules made under the provisions of Part III of this Law,

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

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

(b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

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

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

"shareholder controller" –

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

(b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

"significant shareholder", in relation to a body (other than a licensed banking institution incorporated in a jurisdiction outside the Bailiwick), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

"skilled person": see section 38(1),

"special purpose vehicle" means a body or entity created solely for the purposes of –

(a) a particular financial transaction or series of financial transactions, or

(b) the holding and/or lending of assets,

"specified class", in relation to an authorised or registered collective investment scheme, means a class specified by rules made under section 19(2),

"States" means the States of Deliberation,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"subsidiary company": see Schedule 5 (and **"subsidiary"** has the same meaning),

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

"transmitted": see section 67(1)(iv),

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

1989[gg],

"units" means the rights and interests (however described) of investors in a collective investment scheme,

"vetted supervised role": see section 39(1).

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

(a) the Policy and Finance Committee of the States of Alderney, and

(b) the Policy and Finance Committee of the Chief Pleas of Sark,

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

(3) Any note in a Schedule to this Law is an integral part of this Law and shall be construed accordingly.

(4) Unless the contrary intention appears, any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(5) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition set out in it.

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gg Ordres en Conseil Vol. XXXI, p. 278.

(6) Subsection (5) is without prejudice to any other power to enact Ordinances or subordinate legislation conferred by the provisions of this Law.

NOTES

In section 79, first, the definition of the expression "Lending, Credit and Finance Law" and, second, paragraph (ba) in the definition of the expression "regulatory Laws" in subsection (1) were both inserted and, third, paragraph (f) of that latter definition was repealed by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022, section 92, Schedule 3, respectively paragraph 4(16)(a), paragraph 4(16)(b)(i) and paragraph 4(16)(b)(ii), with effect from 1st January, 2023.

The following Regulations have effect as if made under section 79:

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

In accordance with the provisions of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, section 8, Schedule 2, paragraph 1 and paragraph 2, with effect from 20th October, 2022, unless the contrary intention appears and subject to any regulations made under section 8(3), first, any reference to a police officer in this Law and any subordinate legislation made hereunder includes a reference to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit and, second, subject to the provisions of section 8(4), any power in an enactment to disclose information to a police officer or customs officer for a specified purpose includes a power to disclose that information to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit for the purpose of carrying out their functions.

In accordance with the provisions of the Police Force (Bailiwick of 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.

Repeals.

80. The following enactments or provisions of enactments are repealed –

(a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987[hh],

(b) in Schedule 2 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, the entries relating to the Protection of Investors (Bailiwick of Guernsey) Law, 1987[ii],

(c) section 45(3) of the Limited Partnerships (Guernsey) Law, 1995[jj],

(d) the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997[kk],

(e) section 2(3) of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002[ll],

(f) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003[mm],

(g) the Protection of Investors (Bailiwick of Guernsey)

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hh Ordres en Conseil Vol. XXX, p. 281.
ii Ordres en Conseil Vol. XXX, p. 243.
jj Ordres en Conseil Vol. XXXVI, p. 264.
kk Ordres en Conseil Vol. XXXVII, p. 24.
ll Order in Council No. XVII of 2002.
mm Order in Council No. XV of 2003.

(Amendment) (No. 2) Law, 2003[nn],

(h) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007[oo],

(i) in the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009[pp], the entries relating to the Protection of Investors (Bailiwick of Guernsey) Law, 1987,

(j) the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010[qq],

(k) the Protection of Investors (Amendment) Ordinance, 1988[rr],

(l) the Protection of Investors (Amendment) Ordinance, 1994[ss],

(m) the Protection of Investors (Amendment) Ordinance,

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nn Order in Council No. XXXII of 2003.

oo Order in Council No. XVIII of 2008.

pp Order in Council No. XIII of 2010.

qq Order in Council No. XX of 2010.

rr Recueil d'Ordonnances Tome XXIV, p. 324.

ss Recueil d'Ordonnances Tome XXVI, p. 333.

1998[tt],

(n) the Protection of Investors (Amendment No. 2) Ordinance, 1998[uu],

(o) the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008[vv],

(p) section 4(b) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015[ww],

(q) section 1(2)(b) of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015[xx],

(r) section 63(2) of the Single Euro Payments Area (Guernsey) Ordinance, 2016[yy],

(s) paragraph 2 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017[zz],

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tt Recueil d'Ordonnances Tome XXVIII, p. 51.

uu Recueil d'Ordonnances Tome XXVIII, p. 87.

vv Ordinance XXXI of 2008.

ww Ordinance No. XII of 2015.

xx Ordinance No. XXXIX of 2015.

yy Ordinance No. II of 2016.

zz Alderney Ordinance No. III of 2017.

(t) paragraph 2 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017[aaa],

(u) paragraph 2 of the Second Schedule to the Transfer of Funds (Sark) Ordinance, 2017[bbb],

(v) regulation 1 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010[ccc],

(w) regulation 1(1) of the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017[ddd],

(x) paragraph 2(1) of Schedule 4 to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017[eee].

NOTE

The Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 has since been repealed by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2023, section 5, with effect from 7th July, 2023.

Savings and transitional provisions.

aaa Ordinance No. XXVII of 2017.
bbb Sark Ordinance No. X of 2017.
ccc G.S.I. No. 83 of 2010.
ddd G.S.I. No. 50 of 2017.
eee Order in Council No. VI of 2017.

81. (1) A person who, immediately before the commencement of this Law, was a licensee within the meaning of the Protection of Investors Law, 1987 shall, on the commencement of this Law, be deemed –

(a) to be a licensee, and

(b) to have been granted a licence,

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly

Without prejudice to the generality of the foregoing, any condition imposed under the provisions of the Protection of Investors Law, 1987 in respect of that person's licence or in respect of licensees generally shall apply in respect of the licence under this Law which that person is deemed to hold by virtue of this subsection.

(2) A person or entity which, immediately before the commencement of this Law, was an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, 1987 shall, on the commencement of this Law, be deemed –

(a) to be an authorised or registered collective investment scheme, and

(b) to have been granted an authorisation or registration,

within the meaning of this Law, and the provisions of this Law and the Enforcement Powers Law shall apply accordingly.

Without prejudice to the generality of the foregoing, any condition

imposed under the provisions of the Protection of Investors Law, 1987 in respect of that person's or entity's authorisation or registration or in respect of authorised or registered collective investment schemes generally shall apply in respect of the authorisation or registration under this Law which that person or entity is deemed to hold by virtue of this subsection.

(3) A person who before the commencement of this Law was at any time but had ceased to be a licensee within the meaning of the Protection of Investors Law, 1987 shall (unless that person is for the time being a licensee within the meaning of this Law) be deemed to be a former licensee within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(4) A person or entity which before the commencement of this Law was at any time but had ceased to be an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, 1987 shall (unless it is for the time being an authorised or registered collective investment scheme within the meaning of this Law) be deemed to be a former authorised or registered collective investment scheme within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(5) A person who at any time before the commencement of this Law carried on controlled investment business –

(a) and who was exempted by the provisions of the Protection of Investors Law, 1987 from the requirement to be licensed thereunder, or

(b) otherwise in such circumstances specified in the provisions of that Law as not to require licensing thereunder,

in respect of such business, but –

(i) who is no longer carrying on controlled investment business, or

(ii) who is not exempted by the provisions of this Law from the requirement to be licensed hereunder or who may not carry on controlled investment business in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

shall (unless that person is for the time being a licensee within the meaning of this Law) be deemed to be a former licensee within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(6) A person or entity which at any time before the commencement of this Law was a collective investment scheme –

(a) and which was exempted by the provisions of the Protection of Investors Law, 1987 from the requirement to be authorised or registered thereunder, or

(b) otherwise in such circumstances specified in the provisions of that Law as not to require authorisation or registration thereunder,

but –

(i) which is no longer a collective investment

scheme, or

(ii) which is not exempted by the provisions of this Law from the requirement to be authorised or registered hereunder or which may not be a collective investment scheme in such circumstances specified in the provisions of this Law as not to require authorisation or registration hereunder,

shall (unless it is for the time being an authorised or registered collective investment scheme within the meaning of this Law) be deemed to be a former authorised or registered collective investment scheme within the meaning of this Law and the Enforcement Powers Law, the provisions of which shall apply accordingly.

(7) Any reference in any enactment, however expressed, to an enactment or any provision of an enactment repealed by this Law and re-enacted (with or without modification) by, or by any provision of, this Law or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of this Law, as a reference to the enactment, or the provision of the enactment, as re-enacted.

(8) Any reference in any enactment, however expressed, to a licensee or a licence within the meaning of the Protection of Investors Law, 1987 shall be construed, after the commencement of this Law, as a reference to a licensee or (as the case may be) a licence within the meaning of this Law.

(9) Any Ordinance or subordinate legislation made or other thing done under an enactment or any provision of an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under, or under any provision of, this Law or the Enforcement Powers Law shall have effect,

after the commencement of this Law, as if made or done under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(10) Subsection (9) applies to any subordinate legislation made under a provision of an enactment repealed by this Law notwithstanding that the corresponding provision of this Law or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(11) Anything in the process of being done on the commencement of this Law under an enactment or a provision of an enactment repealed by this Law which could be done under, or under any provision of, this Law or the Enforcement Powers Law may be continued to be done after the commencement of this Law under, or under that provision of, this Law or the Enforcement Powers Law (as the case may be).

(12) The Committee may make regulations containing such savings and transitional provision as it thinks fit –

(a) in connection with the commencement of any of the provisions of this Law, and

(b) for effecting the transition from the provisions of any enactment repealed by this Law which are re-enacted (with or without modification) by the provisions of this Law to the corresponding provisions of this Law.

(13) Regulations under subsection (12) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of

or transition to that provision or any other provision of this Law, whether or not yet in force.

(14) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any other provision of this Law.

Citation.

82. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) Law, 2020.

Commencement.

83. This Law shall come into force on the day appointed by Ordinance of the States, and different days may be appointed for different provisions or different purposes.

NOTE

The Law was brought into force on 1st November, 2021 by the Protection of Investors (Bailiwick of Guernsey) (Commencement) Ordinance, 2021, section 1.

SCHEDULE 1 Section 1(3)(b)

CONTROLLED INVESTMENTS

Category 1:
Collective investment schemes

1. (1) A collective investment scheme constitutes a controlled investment for the purposes of this Law; and, subject to the provisions of this paragraph a collective investment scheme is any arrangement relating to property of any description (including money) –

(a) the purpose or effect of which is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income,

(b) in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions), and

(c) under which –

(i) the contributions of the investors and the profits or income out of which payments are to be made to them are pooled, or

(ii) the property in question is managed as a whole by or on behalf of the person responsible for its management.

(2) Where any arrangement provides for parts of the assets in question to be owned by different investors or for such pooling as is mentioned in subparagraph (1)(c)(i) in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless it has the characteristic mentioned in subparagraph (1)(c)(ii) or the investors are entitled to exchange rights in one part for rights in another.

(3) The following are not collective investment schemes –

(a) an arrangement operated by a person otherwise than by way of business,

(b) an arrangement where each of the investors carries on a business other than investment business and enters into the arrangement for commercial purposes related to that business,

(c) an arrangement where each of the investors is a company in the same group as the manager,

(d) an arrangement where –

(i) each of the investors is a bona fide employee or former employee (or the wife, husband, widow, widower, child under the age of 18 or step-child under the age of 18 of such an employee or former employee) of a company in the same group as the company responsible for the management of the arrangement, and

(ii) the property to which the arrangement relates consists of securities in or of a member of that group,

(e) an arrangement where the receipt of the investors' contributions constitutes the acceptance of a deposit in the course of the carrying on of a deposit-taking business within the meaning of the Banking Supervision Law,

(f) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trade name or design or other intellectual property or the good-will attached to it,

(g) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons,

(h) a contract of insurance,

(i) an occupational pension scheme,

(j) an arrangement under which –

(i) the units of investors consist of instruments which confer rights (other than options to purchase) in respect of only one issue, or

(ii) each investor owns a part of the property and may withdraw it at any time, if the arrangement does not involve such pooling as is mentioned in subparagraph (1)(c)(i) and falls within subparagraph (1)(c)(ii) only because each investor's property is not separately bought and sold except when a person becomes, or ceases to be, an investor,

(k) a friendly society registered under an enactment relating to friendly societies and recognised by the Commission as being such a society.

(4) In this paragraph an "occupational pension scheme" means an arrangement comprised in one or more instruments or agreements which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

Category 2:
General securities and derivatives

2. (1) General securities and derivatives constitute controlled investments for the purposes of this Law; and for those purposes general securities and derivatives comprise –

(a) shares and stock in the share capital of a company other than an investment company,

(b) debentures, debenture stock, loan stock, bonds,

certificates of deposit, and other instruments creating or acknowledging the indebtedness of a company or public sector body; but this item does not extend –

(i) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services,

(ii) to a cheque or other bill of exchange, a banker's draft or a letter of credit,

(iii) to a bank note, a bank statement, or (by reason of any financial obligation contained in it) to any lease or disposition of real property, to any bond or other security over real property, or to an insurance policy,

(c) without prejudice to the generality of item (a), shares in an investment company,

(d) warrants or other instruments entitling the holder to subscribe for investments falling within items (a), (b), or (c),

(e) certificates or other instruments which confer proprietary, disposal, underwriting, conversion or acquisition rights in respect of investments falling within any of items (a) to (d),

(f) options to acquire or dispose of –

(i) an investment falling within any other item of this subparagraph, or within this item,

(ii) currency, or

(iii) gold, palladium, platinum or silver,

(g) rights under a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers and clients of banks and bureaux de change,

(h) rights under a contract for differences, or under any other contract of which the purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description, or in an index or other factor designated for that purpose in the contract, except where the parties intend that the profit be obtained, or the loss be avoided, by taking delivery of the property to which the contract relates,

(i) rights to, and interests in, any of the foregoing investments.

(2) In this paragraph –

"company" means any body (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body,

"public sector body" means any international, national or local government, governmental or other public body or organisation.

SCHEDULE 2 Section 1(3)(c)

RESTRICTED ACTIVITIES

The activities which, for the purposes of this Law, constitute restricted activities when carried on in connection with a controlled investment are:

1. ***Promotion***, that is to say –

(a) advertising,

(b) issuing a prospectus, application form or proposal form,

(c) circulating or making available promotional material.

2. ***Subscription***, that is to say, receiving funds or assets for the purposes of investment.

3. ***Registration***, that is to say –

(a) recording particulars of a specified investor,

(b) issuing a certificate or policy to a specified investor or to bearer.

4. ***Dealing***, that is to say –

(a) buying, selling, subscribing for, borrowing, lending or underwriting an investment,

(b) making arrangements for another person to buy, sell,

subscribe for, borrow, lend or underwrite an investment,

(c) providing facilities for another person to realise the value of an investment.

5. ***Management***, that is to say, exercising any managerial function in relation to an investment or in relation to the assets underlying an investment.

6. ***Administration***, that is to say, providing any administrative, secretarial or clerical services in relation to an investment, including –

(a) the provision of general accountancy and book-keeping services, but not the audit of accounts, and

(b) the provision of valuation services on a continuing basis in connection with any dealing in an investment.

7. ***Advising***, that is to say, giving advice as to the purchase, sale, subscription for or underwriting of particular investments, or advice as to the exercise of rights conferred by particular investments.

8. ***Custody***, that is to say –

(a) holding as trustee or custodian the assets underlying a collective investment scheme, within the meaning of category 1 in Schedule 1, or the evidence of title to those assets,

(b) safeguarding assets belonging to others which comprise general securities and derivatives within the meaning of

category 2 in Schedule 1, or the evidence of title to such assets.

9. ***Operating an investment exchange***, that is to say, providing a facility, whether by electronic means or otherwise, for the orderly trading of securities, or for the listing of securities for the purpose of trading, by members of the investment exchange.

Note A:
Procurement of facilities

Entering into a contract with a person for the performance by that person of any restricted activity also constitutes a restricted activity for the purposes of this Law.

Note B:
Incidental activities

An activity undertaken in the course of a profession or business which is not itself controlled investment business is not a restricted activity if the activity is –

(a) a part of other services provided in the course of that profession or business, and

(b) undertaken without separate or additional remuneration, whether from the client concerned or from a third party.

Note C:
Groups and joint enterprises

An activity described in paragraph 4, 5, 6, 7 or 8 of this Schedule is not a restricted activity if the parties involved –

(a) are companies in the same group, or

(b) are, or propose to become, participators in a joint enterprise and the activity is undertaken in connection with that enterprise.

Note D:
Overseas collective investment schemes –
limited applicability of section 7

For the purposes of section 7 (though not for any other purpose) an activity carried on by a licensee in connection with a collective investment scheme incorporated or established under the law of a jurisdiction outside the Bailiwick is only a restricted activity if –

(a) the manager of the scheme is, or has delegated the duties of manager to, a licensee, and

(b) the custodian or trustee of the scheme is, or has delegated the duties of custodian or trustee to, a licensee.

SCHEDULE 3 Section 8(5)

REQUIREMENTS FOR AUTHORISED OR REGISTERED COLLECTIVE INVESTMENT SCHEMES

1. The scheme must comply with the provisions of all rules made under the provisions of this Law applicable to the class of authorised or registered collective investment scheme which it is declared to be.

2. The name of the scheme must not be undesirable or misleading.

3. The purposes of the scheme must be reasonably capable of being successfully carried into effect.

4. A scheme which is promoted or otherwise described as an open-ended investment scheme must entitle investors either –

(a) to have their units redeemed or repurchased at a price related to the net value of the property to which the units relate, or

(b) to sell their units on a recognised investment exchange at a price not significantly different from that mentioned in subparagraph (i) of this paragraph.

5. The designated administrator and the designated trustee or custodian of the assets of a scheme which is promoted or otherwise described as an open-ended investment scheme must each be a company.

Power to make regulations.

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

SCHEDULE 4 Section 4

MINIMUM CRITERIA FOR LICENSING

Fit and proper persons.

1. (1) The applicant or licensee is a fit and proper person to hold a licence and every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee, is a fit and proper person to hold that position.

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

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

(b) the diligence with which A is fulfilling or likely to fulfil those responsibilities,

(c) whether the interests of the public or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by A holding a licence or that position,

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

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

(f) A's policies, procedures and controls for the vetting of investors and clients and A's record of compliance with the provisions of –

(i) the appointed Laws,

(ii) the Transfer of Funds (Guernsey) Ordinance, 2017, the Transfer of Funds (Alderney) Ordinance, 2017 and the Transfer of Funds (Sark) Ordinance, 2017,

(iii) the Single Euro Payments Area (Guernsey) Ordinance, 2016,

(iv) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,

(v) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,

(vi) any legislation implementing European Union or United Nations sanctions and applicable in the Bailiwick, and

(vii) any other enactment prescribed for the purposes of this Law by regulation of the Commission, and

(g) A's policies, procedures and controls to comply with any rules, codes, guidance, principles, policies and

instructions referenced in paragraph 2(2).

(2) Without prejudice to the generality of subparagraph (1), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that that person has –

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

(b) contravened any of the provisions of –

(i) this Law,

(ii) the regulatory Laws,

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

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

(v) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –

(A) dishonesty, incompetence or mal-

practice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries Law), banking, insurance, investment or other financial services, or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons in respect of whom there has been a winding up event within the meaning of the Enforcement Powers Law),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on that person's method of conducting business or that person's suitability to carry on business regulated by the provisions of this Law, or

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

(3) For the purposes of this paragraph and for the avoidance of

doubt –

(a) **"conduct and activities"** includes any conduct, activity or omission in any jurisdiction,

(b) **"offence"** includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

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

Integrity and skill.

2. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by the provisions of this Law, will be carried on –

(a) with prudence and integrity,

(b) with professional skill appropriate to the nature and scale of the activities of the applicant or licensee, and

(c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting business the applicant or licensee shall at all times act in accordance with the following documents issued by the Commission –

(a) the Principles of Conduct of Finance Business,

(b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensee.

Business to be directed by at least two individuals.

3. (1) At least two individuals, who are –

(a) of appropriate standing and experience, and

(b) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensee.

(2) For the purposes of subparagraph (1)(b), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

Composition of board of directors.

4. Where the applicant or licensee is a company, the board of directors shall include such number of –

(a) directors with executive responsibility for the management of its business, and

(b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

Business to be conducted in prudent manner.

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

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

(a) A maintains or, as the case may be, will maintain –

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

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

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

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

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

(iv) the risks inherent in those operations and (where

A is a company) in the operations of any other company in the same group, so far as capable of affecting the company, and

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

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

(i) depreciation or diminution in the value of A's assets (including provision for bad or doubtful debts),

(ii) liabilities which will or may fall to be discharged by A, and

(iii) losses which A will or may incur, and

(d) A maintains or, as the case may be, will maintain –

(i) adequate accounting and other records of A's business, and

(ii) adequate systems of control of A's business and records.

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

(a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,

(b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by the applicant or licensee for the proper maintenance and development of such systems,

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

(d) where the applicant or licensee is a company which is part of a group, whether the structure or organisation of the group hinders effective supervision.

(4) For the purposes of –

(a) subparagraph (2)(a), an appropriate amount is –

(i) an amount commensurate with the nature and scale of A's operations, and

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

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

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

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

(b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensee the Commission may, to such extent as it thinks appropriate, take into account –

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

(ii) the facilities which are available to the applicant or licensee and which are capable of providing liquidity within a reasonable period, and

(c) subparagraph (2)(d) –

(i) records and systems shall not be regarded as adequate unless they are such as to enable –

(A) the business of the applicant or licensee to be managed prudently, and

(B) the applicant or licensee to comply with the duties imposed by or under the provisions of this Law or any enactment listed in paragraph 1(1)(f), and

(ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

6. The applicant, licensee and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

Power to make regulations.

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

NOTE

The following Regulations have effect as if made under Schedule 4:

Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017.

SCHEDULE 5 Section 79

MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

(a) that other –

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

(a) that a person cannot be appointed thereto without the exercise in that person's favour by that other company of such a power,

(b) that a person's appointment thereto follows necessarily

from that person's appointment as director of that other company,

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

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

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

(b) subject to the provisions of items (c) and (d), any shares held or power exercisable –

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded,

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in item (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

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