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PROJET DE LOI

ENTITLED

**The Financial Services Commission (Bailiwick of Guernsey)
Law, 1987 ***

*[CONSOLIDATED TEXT]***NOTE***This consolidated version of the enactment incorporates all amendments*

* Ordres en Conseil Vol. XXX, p. 243; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the States Committees (Constitution and Amendment) (Guernsey) Law, 1991 (No. XX of 1991); the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (No. XIII of 1994); the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997 (No. II of 1997); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002 (No. XVII of 2002); the Insurance Business (Bailiwick of Guernsey) Law, 2002 (No. XXI of 2002); the Public Trustee (Bailiwick of Guernsey) Law, 2002 (No. III of 2003); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003 (No. XXII of 2003); the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008 (No. XIX of 2008); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008 (No. XXIII of 2008); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008 (No. XXIV of 2008); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2010 (No. ** of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV of 2005); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2009 (G.S.I. No. 29 of 2009). See also the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2010 (G.S.I. No. 63 of 2010).

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listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. 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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The Financial Services Commission (Bailiwick of Guernsey) Law, 1987

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The Financial Services Commission (Bailiwick of Guernsey) Law, 1987

THE STATES, in pursuance of their Resolution of the 1st day of May 1986, 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.

Establishment and functions of the Commission

The Guernsey Financial Services Commission.

1. (1) There is established by, and in accordance with the provisions of, this Law a body to be known as the Guernsey Financial Services Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal, and is capable of suing and being sued in its corporate name.

(3) Schedule 1 has effect as respects the constitution and proceedings of the Commission.

Functions of the Commission.

2. (1) The functions of the Commission are referred to in this Law as "general functions" and "statutory functions".

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- (2) The general functions of the Commission are –
- (a) to take such steps as the Commission considers necessary or expedient for the [...] effective supervision of finance business in the Bailiwick,
 - (b) to provide for the Committee, or the [Policy and Finance Committee] of the States of Alderney [or the [Finance and Commerce Committee] of the Chief Pleas of Sark when either of such committees] so requests, reports, advice and assistance on any matter connected with finance business,
 - (c) to prepare and submit to the Committee or the [Policy and Finance Committee] of the States of Alderney [or the [Finance and Commerce Committee] of the Chief Pleas of Sark], either at the request of one of those committees or of its own motion, recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings,
 - [(d) the countering of financial crime and of the financing of terrorism; and in this paragraph "**financial crime**" includes any offence involving –
 - (i) fraud or dishonesty,
 - (ii) misconduct in, or misuse of information

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relating to, a financial market, or

(iii) handling the proceeds of crime,

and "offence" includes an act or omission which would be an offence if it had taken place in the Bailiwick,]

[(e)] to take such steps as the Commission considers necessary or expedient for –

(i) maintaining confidence in the Bailiwick's financial services sector, and

(ii) the safety, soundness and integrity of that part of the Bailiwick's financial services sector for which it has supervisory responsibility, and

(f) all such other functions as the States may by Resolution assign to the Commission.]

[(2A) [The exercise of the general functions of the Commission may include], without limitation –

(a) the establishment and ongoing support of bodies and organisations the functions of which include or are important or relevant to –

(i) ...

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- (ii) ...
 - (iii) the protection of the public, or
 - (iv) the protection and enhancement of the reputation of the Bailiwick as a financial centre,
- (b) the approaching, at the request of third parties or otherwise, of persons engaged or otherwise connected with that sector of the Bailiwick economy which carries on finance business for statistical information for analysis and, where appropriate, for onward transmission to third parties,
- (c) the provision to the Committee, the Policy and Finance Committee of the States of Alderney and the [Finance and Commerce Committee] of the Chief Pleas of Sark, when any of such committees so requests, and subject to the agreement of the Commission, of statistical information relating to that sector of the Bailiwick economy which carries on finance business.

(2B) The Committee may, after consultation with the Commission, make (and subsequently amend and repeal) regulations requiring the provision by persons described in subsection (2A)(b) of statistical information: and any such regulations may create offences and prescribe penalties for contraventions or failures to comply with the regulations.]

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- (3) The statutory functions of the Commission are –
- (a) the functions transferred to it by section 3,
 - (b) any functions assigned to it by or under any enactment [...],
 - (c) to provide for the Committee, when the Committee so requests, reports, advice and assistance in relation to the exercise of the Committee's functions under any enactment relating to finance business.
- (4) In the exercise of its [...] functions the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to –
- (a) [the protection of the public interest, including] the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on finance business, and
 - (b) the protection and enhancement of the reputation of the Bailiwick as a financial centre.

NOTES

In section 2,

the words omitted in square brackets in paragraph (a) of subsection (2) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 2, with effect from 28th October, 2008;

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the words in the first and second pairs of square brackets in paragraph (b) of subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(a)(i) and section 1(a)(ii), with effect from 1st November, 2002;

the words in square brackets, first, within the second pair of square brackets in paragraph (b) of subsection (2), second, within the second pair of square brackets in paragraph (c) of subsection (2) and, third, in paragraph (c) of subsection (2A) were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009, section 3(b), Schedule 2, with effect from 1st November, 2009;

the words in the first pair of square brackets in paragraph (c) of subsection (2) were substituted, and the words in the second pair of square brackets therein were inserted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(b)(i) and section 1(b)(ii), with effect from 1st November, 2002;

paragraph (d) of subsection (2) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(c), with effect from 1st November, 2002;

paragraph (e) of subsection (2) (which paragraph was originally re-lettered, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(c), with effect from 1st November, 2002) was substituted, and paragraph (f) of subsection (2) was inserted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008, section 2, with effect from 28th October, 2008;

subsection (2A) and subsection (2B) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(d), with effect from 1st November, 2002;

the words in the first pair of square brackets within subsection (2A) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 3(a), with effect from 28th October, 2008;

sub-paragraph (i) and sub-paragraph (ii) of paragraph (a) of subsection (2A) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 3(b), with effect from 28th October, 2008;

the words omitted in square brackets in paragraph (b) of subsection (3) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(e), with effect from 1st

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November, 2002;

the word omitted in square brackets in subsection (4) was repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(f), with effect from 1st November, 2002;

the words in square brackets in paragraph (a) of subsection (4) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(g), with effect from 1st November, 2002.

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Finance and Commerce Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009, section 1, Schedule 2, with effect from 1st November, 2009, subject to the savings and transitional provisions in section 2(2) of the 2009 Ordinance.

Transfer of statutory functions to the Commission.

3. (1) There are hereby transferred to the Commission the functions which would, apart from the provisions of this section, be exercisable by the Committee in relation to –

- (a) ...
- (b) the granting of permission to use a word or expression in the name, description or title under which a person carries on business, under Part III of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969,
- (c) the registration of insurers and regulation of insurance business under the Insurance Business (Guernsey)

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Law, 1986^b,

- (d) the authorisation and regulation of insurance managers under the Insurance Business (Guernsey) Law, 1986,
- (e) the approval of authorised insurers for the purposes of –
 - (i) section 3 of the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936^c,
 - (ii) section 1 of the Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969^d,
 - (iii) section 1 of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972^e,
- (f) the authorisation of collective investment schemes

^b Ordre en Conseil No. XIII of 1986.

^c Ordres en Conseil Vol. X, p. 388; Vol. XV, p. 43; Vol. XVIII, pp. 35 and 257; Vol. XX, p. 247; Vol. XXIII, p. 227; Vol. XXIV, p. 250; No. III of 1979; No. XVII of 1983; No. XIII of 1986.

^d Ordres en Conseil Vol. XXII, pp. 2 and 53; Vol. XXIV, p. 250; No. XIII of 1986.

^e Ordres en Conseil Vol. XXIII, p. 515; Vol. XXIV, p. 250; Ordinance No. XXIV of 1981; Ordre en Conseil No. XIII of 1986.

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under Part II of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^f, the making of rules under section 20 of that Law, and the regulation of authorised collective investment schemes under that Law,

- (g) the licensing of persons to carry on restricted activities in connection with controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the making of rules under Part III of that Law and the regulation of controlled investment business under that Law,

but nothing in this Law derogates from any power of the Committee, or confers any power on the Commission, to make orders or regulations.

(2) For the purpose of the exercise of the functions transferred to it by this section the Commission is subject to all of the duties previously imposed on the Committee by or under any enactment and has, subject to the provisions of this Law, all of the powers and privileges previously conferred on the Committee by or under any enactment.

(3) The enactments specified in Schedule 2 have effect subject to the amendments mentioned in that Schedule.

NOTES

In section 3, paragraph (a) of subsection (1) was repealed by the Banking

^f Ordre en Conseil No. XX of 1987.

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Supervision (Bailiwick of Guernsey) Law, 1994, section 57(d), with effect from 1st October, 1994.

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

*The Commission and the States***Status of the Commission.**

4. (1) The Commission is not a committee of the States, or a servant or agent of the States, and, except to the extent that this Law or any other enactment otherwise provides –

(a) is not subject to any rule of law relating to committees of the States,

(b) does not have any right or privilege vested in committees of the States.

(2) The Commission may consult and co-operate with any committee of the States in relation to matters concerning finance business.

Provision of information to the [Policy Council].

5. Without prejudice to the generality of section 4(2), but subject to section 21, the Commission shall, when requested in writing by the Committee, furnish the Committee, to the best of the Commission's ability, with such information as the Committee may require in relation to finance business in the Bailiwick.

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NOTE

In section 5, the words in square brackets in the marginal note thereto were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

Annual report.

6. (1) The Commission shall, as soon as practicable in each year, make a report to the Committee on its activities during the preceding year; and the President of the Committee shall, as soon as practicable, submit that report for consideration by the States.

(2) The annual report made pursuant to subsection (1) may refer to any aspect of the Commission's functions and in particular –

- (a) may set out or refer to any guidance given to the Commission under section 7(1)(a) during the preceding year, and
- (b) shall set out any directions given to the Commission under section 7(1)(b) during the preceding year.

Guidance and directions.

7. (1) The Committee may, after consulting the Commission, give to the Commission –

- (a) written guidance of a general character, and
- (b) written directions of a general character, concerning

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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 carried out.

(2) It is the duty of the Commission, in carrying out any of its functions –

- (a) to take into account any guidance given under paragraph (a) of subsection (1), and
- (b) to act in accordance with any directions given under paragraph (b) of subsection (1).

[(2A) Any guidance or direction given under this section –

- (a) may be given only in the public interest, and not to influence particular cases,
- (b) must not prejudice the operational independence of the Commission by prescribing the specific manner in which the Commission should carry out its supervisory functions, and
- (c) must be published : provided that the guidance or direction may come into effect as soon as it is given.]

(3) It is hereby declared for the avoidance of doubt that the Commission shall not be deemed to have acted unreasonably or beyond its powers in the exercise of any of its statutory functions by reason only of the fact that it has

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complied with its duty under subsection (2).

NOTES

In section 7,

the words omitted in square brackets in paragraph (b) of subsection (1) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 4, with effect from 28th October, 2008;

subsection (2A) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008, section 3, with effect from 28th October, 2008.

Powers of the Commission

General powers of the Commission.

8. (1) The Commission may do anything which appears to it to be conducive to the carrying out of its functions or to be incidental to their proper discharge.

(2) Without prejudice to the generality of subsection (1) the Commission may, in connection with the carrying out of its general functions –

- (a) obtain information relating to the [supervision] of finance business in the Bailiwick and the [...] supervision of similar business carried on outside the Bailiwick,
- (b) consult and seek the advice of such persons or bodies as it considers appropriate,

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- (c) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit,
- (d) ...

(3) This section relates only to the capacity of the Commission as a body corporate and does not authorise the disregard by the Commission of any enactment or rule of law.

NOTES

In section 8,

the word in the first pair of square brackets in paragraph (a) of subsection (2) was substituted, and the words omitted in the second pair of square brackets therein were repealed, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, respectively section 5(a) and section 5(b), with effect from 28th October, 2008;

paragraph (d) of subsection (2) was repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 6, with effect from 28th October, 2008.

Contractual powers.

9. (1) The Commission may enter into a contract, or make an arrangement, with any person for the provision of any service or any facility to facilitate the carrying out of the Commission's functions, and may expend money generally for the proper purposes of the Commission.

(2) The power conferred by subsection (1) includes power –

- (a) to open, operate and close banking accounts in the

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name of the Commission,

- (b) to enter into, and pay any premium in respect of, contracts of insurance insuring the Commission, any member of the Commission, or any officer or servant of the Commission against –
 - (i) any risk to the Commission's property, or
 - (ii) any risk arising in connection with the carrying on of the Commission's functions, including, without prejudice to the generality of the foregoing, the risk of a claim against the Commission in respect of any description of civil liability.

Powers as to property.

10. (1) The Commission has all such powers in relation to the acquisition, use and disposal of property (whether realty or personalty) as are conducive to the carrying out of its functions.

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

- (a) acquire any land or building, or an interest in any land or building, by purchase, lease, sublease, easement or otherwise,
- (b) deal generally with, and dispose of, by sale, lease, sublease, easement or otherwise, any land or building

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or an interest in any land or building,

- (c) acquire any furniture, equipment or other personalty, by purchase, hire, bailment or otherwise,
- (d) deal generally with, and dispose of, by sale, hire, bailment or otherwise, any furniture, equipment or other personalty.

Appointment, remuneration etc. of staff.

11. (1) The Commission may appoint such officers and servants as it considers necessary for carrying out its functions[; and the most senior officer of the Commission shall have the title Director-General].

[(1A) The Director-General shall, subject to provisions of subsection (1B) and to the terms and conditions of his appointment as to resignation, hold office for a minimum term which shall be determined by the Commission.

(1B) The Director-General may be dismissed from office by the Commission, but only on the following grounds –

- (a) that he has been absent from three consecutive meetings of the Commission without the Commission's consent,
- (b) that he has been declared insolvent,
- (c) that he is incapacitated by physical or mental illness, or

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- (d) that he is otherwise unable or unfit to discharge the functions of Director-General,

and if he is dismissed from office then public notice shall be given of the reasons for the dismissal.

(1C) The power conferred by subsection (1A) to determine a minimum term of office may not be delegated to any of the Commission's members or officers under section 19(1).]

(2) An appointment under subsection (1) may be made on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission may establish and maintain such schemes, or make such other arrangements, as it thinks fit for the payment of pensions and other benefits in respect of its officers and servants.

[(4) Without prejudice to the provisions of sections 22 and 23 (and of any Ordinance thereunder), the Commission shall take such steps as it considers necessary and reasonable to protect and indemnify its current and former members, officers and servants against any costs, claims, liabilities and proceedings arising from or in consequence of anything done or omitted to be done in the discharge or purported discharge by them of their functions as members, officers or, as the case may be, servants of the Commission.]

NOTES

In section 11,

the words in square brackets in subsection (1) were inserted by the

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Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(h), with effect from 1st November, 2002;

subsection (1A), subsection (1B) and subsection (1C) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(2), with effect from 14th August, 2003;

subsection (4) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(3), with effect from 14th August, 2003.

[Publication of regulations, etc.]

11A. 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, and subject to such charges (if any) as it may decide to levy to cover the costs of publication –

- (a) any regulations, rules, codes of conduct and guidance notes made by the Commission in pursuance of its functions, and
- (b) any policies issued or applied by the Commission in respect of the granting, amendment, suspension and revocation by it, in pursuance of its statutory functions, of any licences, consents, registrations, permissions and authorisations.]

NOTE

Section 11A was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(4), with effect from 14th August, 2003.

*Consolidated text**[General enforcement powers of the Commission***Disqualification orders against auditors.**

11B. (1) Where the Commission is satisfied that a person who is or has been an auditor of a licensee –

- (a) has failed to comply with any duty imposed on him by or under the regulatory Laws, or
- (b) is for any other reason unfit to be an auditor of a licensee (whether by reason of lacking the necessary skills or resources to carry out effectively his responsibilities as auditor or otherwise),

or that for any other reason it is in the interests of the public or any class thereof to do so, the Commission may, subject to the provisions of section 11E, make an order (a "disqualification order") disqualifying him from being the auditor of any licensee or any particular class of licensee.

(2) The Commission may, on the application of the person named in a disqualification order or of its own motion, and subject to the provisions of section 11E, vary or revoke a disqualification order.

(3) A "licensee" means a person who holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws.]

NOTE

Section 11B (which was originally inserted by the Financial Services

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Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(4), with effect from 14th August, 2003) was repealed by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 2, then inserted by section 3 of the same Law, with effect from 30th July, 2008.

[Public statements.]

11C. (1) Where the Commission is satisfied that a licensee, former licensee or relevant officer –

- (a) has contravened in a material particular a provision of, or made under, the prescribed Laws, or
- (b) does not fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to him,

it may, subject to the provisions of section 11E, publish a statement to that effect.

(2) In deciding whether or not to publish a statement under this section and, if so, the terms thereof the Commission must take into consideration the following factors –

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,

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- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of publishing a statement, and
- (f) the action taken by the Commission under this section in other cases.

(3) A "relevant officer" means a person who when the contravention or non-fulfilment in question took place was a director, controller, partner, manager, general representative or authorised insurance representative of a licensee or former licensee.]

NOTE

Section 11C was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

[Discretionary financial penalties.]

11D. (1) Where the Commission is satisfied that a licensee, former licensee or relevant officer –

- (a) has contravened in a material particular a provision of, or made under, the prescribed Laws, or

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- (b) does not fulfil any of the minimum criteria for licensing specified in the regulatory Laws and applicable to him,

it may, subject to the provisions of section 11E, impose on him a penalty in respect of the contravention or non-fulfilment of such amount not exceeding £200,000 as it considers appropriate.

(2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Commission must take into consideration the following factors –

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty, and

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- (f) the penalties imposed by the Commission in other cases.

(3) Where a penalty is imposed on a person under this section, the Commission may publish his name and the amount of the penalty.

(4) Any sums which the Commission receives in any calendar year in respect of penalties imposed under this section on persons who are licensees, former licensees or relevant officers for the purposes of a particular regulatory Law shall be taken into account by the Commission in determining the fees payable to it pursuant to that regulatory Law in the following calendar year or, if that is not reasonably practicable, in the subsequent calendar year.]

NOTE

Section 11D was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

[Notice of intended decision.]

11E. (1) Where the Commission proposes to make a decision in respect of which a right of appeal is conferred by section 11H it shall serve on 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,

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- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine, and
- (d) giving particulars of the right of appeal which would be exercisable under section 11H if the Commission were to make the decision.

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

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre.

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 the procedure prescribed in this section may be dispensed with altogether.

(4) For the avoidance of doubt –

- (a) a notice about a proposal to publish a statement must set out the terms of the statement, and
- (b) a notice about a proposal to impose a financial penalty

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must state the amount of the penalty.]

NOTE

Section 11E was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

[Notice of decision.]

11F. Where the Commission decides (having taken into account, where appropriate, any representations made by the person concerned) to make a decision in respect of which a right of appeal is conferred by section 11H it shall serve on the person concerned notice in writing of the decision –

- (a) stating the terms of, and the grounds for, the decision, and
- (b) giving particulars of the right of appeal conferred by section 11H.]

NOTE

Section 11F was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

[Disclosure of reasons for decisions.]

11G. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 11H, the person concerned may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the

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decision.

(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 in any other place. or
- (c) a third party (wherever situated).

(3) Where, pursuant to subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 11H.]

NOTE

Section 11G was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

[Appeals against decisions.]

11H. (1) A person aggrieved by a decision of the Commission –

- (a) to make or vary a disqualification order against him under section 11B,

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- (b) to refuse to vary or revoke a disqualification order made against him under section 11B,
- (c) to publish a statement relating to him under section 11C,
- (d) to impose a financial penalty on him under section 11D,
- (e) to publish his name under section 11D(3) as a person on whom such a penalty has been imposed, or
- (f) to omit, pursuant to section 11G(2), any matter from a statement of reasons given to him,

may appeal to the Court against the decision.

- (2) 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

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procedure.

- (3) 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.
- (4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may –
- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
 - (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

- (5) On an appeal under this section the Court may –
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the

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

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

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

This subsection is without prejudice to the operation of section 11E(3).

(7) An appeal against a decision to publish a statement in respect of a person shall be held in private unless –

- (a) the parties agree that all or part of the hearing should be held in public, or
- (b) the Court so orders.

(8) Where an appeal against a decision to publish a statement under section 11C or 11D(3) is upheld the Commission shall, if the appellant so requests, publish a statement of that fact.

This subsection applies where pursuant to section 11E(3) the appellant did not have an opportunity to make representations before the decision was made.

(9) An appeal from a decision of the Court under this section lies

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to the Court of Appeal on a question of law.

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

NOTES

Section 11H was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

In accordance with the provisions of the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2010, regulation 3, with effect from 1st September, 2010, the provisions of this section apply in relation to a decision of the Commission to impose an administrative financial penalty under regulation 1 of the 2010 Regulations as they apply in relation to a decision of the Commission described in subsection (1) of this section, except that the sole ground of appeal is that the decision was wrong.

[Administrative financial penalties.]

11I. (1) The Commission may, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, by regulation make such provision as it thinks fit in respect of the charging of administrative financial penalties for –

- (a) the late payment of fees or charges required to be paid, or
- (b) the late filing or delivery of documents or information required to be filed or delivered,

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by or under the regulatory Laws.

(2) Regulations under this section –

- (a) may prescribe the amount and / or basis of calculation of penalties payable in the circumstances described in subsection (1),
- (b) may provide for the payment and collection of fees, charges and penalties and for their recovery by the Commission as a civil debt,
- (c) may make provision in relation to appeals (including, without limitation, provision applying the provisions of section 11H subject to such exceptions, adaptations and modifications as may be prescribed), and
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force.

(3) Regulations under this section shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.]

NOTES

Section 11I was inserted by the Financial Services Commission

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(Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.

The following Regulations have been made under section 11I:

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

[Powers under prescribed Laws not affected.]

11J. The provisions of sections 11B to 11I are without prejudice to the powers of the Commission conferred by or under the prescribed Laws.]

NOTE

Section 11J was inserted by the ~~Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 3, with effect from 30th July, 2008.~~

Financial provisions

The Commission's funds.

- 12.** The funds and resources of the Commission are –
- (a) the fees and charges paid to the Commission in accordance with section 13,
 - (b) any grant paid to the Commission under section 14,
 - (c) any money borrowed by the Commission in accordance with section 15,
 - (d) any other money or property, and any income and

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profits derived from such money or property, as is lawfully vested in the Commission through the exercise of its powers under this Law.

Fees and charges.

13. There shall be payable to the Commission –

- (a) in connection with the exercise of any statutory function of the Commission, fees of such amounts, by such persons and in such manner, as may be specified by or under the enactment under which that statutory function is exercised,
- (b) in connection with the exercise of any general function of the Commission, fees and charges of such amounts, by such persons and in such manner, as may be specified by any order [made under this paragraph by the Commission after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [Finance and Commerce Committee] of the Chief Pleas of Sark],
- (c) by any person for whom the Commission provides such assistance or service as is referred to in section 8(2)(d), such charges as, subject to any order made under paragraph (b) of this section, may be agreed between that person and the Commission.

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In section 13,

the words in square brackets in paragraph (b) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(5), with effect from 14th August, 2003;

the words in square brackets within the square brackets in paragraph (b) were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009, section 3(b), Schedule 2, with effect from 1st November, 2009.

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Finance and Commerce Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009, section 1, Schedule 2, with effect from 1st November, 2009, subject to the savings and transitional provisions in section 2(2) of the 2009 Ordinance.

The following Regulations have been made under section 13:

*Financial Services Commission (Fees) Regulations, 2009;
Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2009.*

Grants to the Commission.

14. (1) In respect of each year the Committee may make a grant to the Commission from the States General Revenue Account towards the expenses of the Commission in carrying out its functions.

(2) The amount of any grant under subsection (1) shall be determined by the Committee after consultation with the Commission; and in determining that amount the Committee shall have regard to the extent, if any, to which the Commission's estimated expenditure in any year is likely to exceed its estimated income from other sources in that year.

Borrowing by the Commission.

15. (1) For the purpose of assisting the Commission to carry out its

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functions, the Committee may make advances to the Commission from the States General Revenue Account.

(2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission [by the Committee] under this section shall not at any time exceed such sum as the States may from time to time by Resolution determine.

(3) No advance shall be made under this section except on such terms (as to repayment, payment of interest or otherwise) as the States may from time to time by Resolution determine.

[(4) The Commission may borrow monies otherwise than as mentioned in the preceding provisions of this section for the purpose of carrying out its functions:

Provided that the Commission may not borrow monies under this subsection at any time to the extent that the aggregate amount outstanding by way of principal in respect of monies so borrowed would exceed one third of the Commission's fee income for the preceding calendar year.]

NOTE

In section 15, the words in square brackets in subsection (2) were inserted, and subsection (4) was substituted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(i) and section 1(j), with effect from 1st November, 2002.

Investment of surplus funds.

16. The Commission may invest [or lend] any of its funds which are not immediately required in any investment [or, as the case may be, by way of any

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loan][:

Provided that the Commission may not lend any of its funds under this subsection at any time to the extent that the aggregate amount lent under this subsection would exceed one third of the Commission's fee income for the preceding calendar year.]

NOTE

In section 16, the words in the first and second pairs of square brackets were inserted, and the words in the third pair of square brackets were substituted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(k)(i), section 1(k)(ii) and section 1(k)(iii), with effect from 1st November, 2002.

Exemption from income tax.

17. The income of the Commission is not subject to income tax under the Income Tax (Guernsey) Law, 1975^g.

[Accounts, audit, internal controls and corporate governance.]

18. (1) The Commission shall –
- (a) keep proper accounts and proper records in relation to those accounts, and
 - (b) prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission.

^g Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146 and 200; Nos. IV and VII of 1979; No. II of 1980; No. II of 1981; No. XI of 1982; No. XV of 1983; No. IX of 1984; No. XIII of 1986.

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(2) The accounts of the Commission shall be –

- (a) audited by auditors appointed by the States, and
- (b) laid before the States, in the same manner as the accounts of a committee of the States.

[(3) The Commission shall review in each year, by the appointment of appropriately qualified and independent professional persons or otherwise –

- (a) the adequacy and application of the Commission's systems of internal control,
- (b) the selection and application of the Commission's accounting policies and accounting procedures,
- (c) the effective, efficient and economical management of the Commission's assets and resources, and
- (d) the Commission's compliance with such generally accepted principles of good corporate governance as it is reasonable to regard as being applicable to the Commission,

and the members of the Commission shall satisfy themselves in connection with the conclusions of any such review.

(4) The Commission shall provide the Committee with an annual report on the matters set out in paragraphs (a) to (d) of subsection (3); and for the

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removal of doubt the report required to be made pursuant to this subsection is in addition to the report required to be made pursuant to section 6.

(5) The Committee may at any time appoint an appropriately qualified and independent professional person to review, and report to the Committee on, the matters set out in paragraphs (a) to (d) of subsection (3); and the Commission shall grant all reasonable assistance to that person in the conduct of his review and the preparation of his report.]

NOTE

In section 18, the marginal note thereto was substituted, and subsection (3), subsection (4) and subsection (5) were inserted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(l), with effect from 1st November, 2002.

*Administrative provisions***Delegation to members and officers.**

19. (1) The Commission may, by an instrument in writing [...], delegate to any of its members or officers named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation,
- (b) its duty to make an annual report to the Committee,
- (c) so much of any of its statutory functions as (however framed or worded) –

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(i) requires the Commission to consider representations concerning a decision which it proposes to take[, being a decision of a description set out in subparagraph (ii)], or

[(ii) empowers the Commission [to make a decision of any of the following descriptions, that is to say,] to cancel, revoke, suspend or withdraw a licence, consent, registration, permission or authorisation (except where the cancellation, revocation, suspension or withdrawal is done with the consent of the person who is, or who is acting on behalf of, the holder of the licence, consent, registration, permission or authorisation),] or

(iii) empowers the Commission to petition for the winding up of a body corporate.

(2) A function delegated under this section may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Law, be deemed to have been carried out by the Commission.

(3) A delegation under this section is revocable by the Commission at will and does not prevent the carrying out of a function by the Commission.

[(4) For the avoidance of doubt, a function may be delegated under this section to a committee of members and / or officers.

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(5) Notwithstanding the provisions of subsection (1)(c), any of the statutory functions mentioned in paragraphs (i), (ii) and (iii) of that subsection may be delegated to a committee of not less than 3 members.]

NOTES

In section 19,

the words omitted in square brackets in subsection (1) were repealed, and sub-paragraph (ii) of paragraph (c) of subsection (1) was substituted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(m) and section 1(n), with effect from 1st November, 2002;

the words in square brackets, first, in sub-paragraph (i) and, second, within sub-paragraph (ii), of paragraph (c) of subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2010, respectively section 2(a) and section 2(b), with effect from 8th November, 2010;

subsection (4) and subsection (5) were inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 4, with effect from 30th July, 2008.

Execution of documents.

20. Subject to section 13 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, any deed, instrument, contract or other document shall be deemed to have been duly executed by or on behalf of the Commission, and shall be effective in law to bind the Commission, if it is [signed by a member or officer of the Commission authorised in that behalf under section 19.]

NOTE

In section 20, the words in square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(o), with effect from 1st November, 2002.

Confidentiality.

21. (1) Any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and servants.

(2) No such information as is referred to in subsection (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information except to the extent that its disclosure [is expressly authorised or required by or under any enactment relating to the Commission's statutory functions, or] appears to the Commission to be necessary –

- (a) to enable the Commission to carry out any of its [...] functions, or
- [(b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,] or
- (c) in connection with the discharge of any international obligation to which the Bailiwick is subject, or
- (d) to assist, in the interests of the public [or otherwise], any authority which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to [any of the functions] of the Commission, or

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[(e) to enable –

- (i) the Public Trustee (the office of which was established by section 1 of the Public Trustee (Bailiwick of Guernsey) Law, 2002), and
- (ii) any authority which appears to the Commission to exercise, in a place outside the Bailiwick, functions corresponding to any of those of the Public Trustee,

to carry out their functions or to investigate matters of relevance to their functions, or]

[(f) to comply with the directions of any division of the Royal Court, [or

- (g) to enable any body established to control or supervise gambling or gaming in the Bailiwick or any part thereof to carry out its functions or to investigate matters of relevance to its functions.]

[(3) Without prejudice to subsections (1) and (2), any information –

- (a) communicated to the Commission or to any of its members, officers or servants by any committee of the States, of the States of Alderney or of the Chief Pleas of Sark, or

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- (b) held by the Commission or by any of its members, officers or servants on behalf of any such committee,

shall be regarded as confidential, if that committee so requests, by the Commission and by its members, officers and servants; and no such information shall be disclosed –

- (i) except in compliance with the directions of any division of the Royal Court, or
- (ii) except, with the leave of that committee (which may be granted generally or for the purposes of any particular case), for any reason set out in paragraphs (a) to (e) of subsection (2).]

(4) A person who [without reasonable excuse] discloses information, or who [without reasonable excuse] causes or permits the disclosure of information, in contravention of this section is guilty of an offence and liable –

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

[(5) In proceedings against a person for an offence under subsection (4) it shall be a defence for him to show –

- (a) that he took all reasonable steps and exercised all due

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diligence to avoid committing the offence, or

- (b) that he did not know and had no reason to suspect that the information in question was to be regarded as confidential.]

[(6) The Commission shall, when disclosing any information to any person (whether pursuant to the provisions of this section or otherwise) –

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that the confidentiality of the information is protected,

as the Commission thinks fit.

(7) Notwithstanding the provisions of subsection (2), no such information as is referred to in subsection (1) which is supplied to the Commission for the purposes of its functions by an authority described in subsection (2)(d) shall be disclosed, except –

- (a) with the consent of the persons whose consent is referred to in subsection (2),

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- (b) to the extent that its disclosure is expressly authorised or required by or under any enactment relating to the Commission's statutory functions,
- (c) for the purposes or in the circumstances described in subsection (2)(a) or (b), or
- (d) with the consent of the authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of subsection (2).]

[(8) The provisions of this section are subject to the provisions of the regulatory Laws relating to the disclosure of information.]

NOTES

In section 21,

the words in the first pair of square brackets in subsection (2) were inserted by the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997, section 2, with effect from 4th March, 1997;

the word omitted in square brackets in paragraph (a) of subsection (2) was repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(p)(i), with effect from 1st November, 2002;

paragraph (b) of subsection (2) was substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(p)(ii), with effect from 1st November, 2002;

the words in the first and second pairs of square brackets in paragraph (d) of subsection (2) were, respectively, inserted and substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(p)(iii), with effect from 1st November, 2002;

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paragraph (e) of subsection (2) was inserted, and paragraph (f) thereof re-lettered, by the Public Trustee (Bailiwick of Guernsey) Law, 2002, respectively section 25(2)(a) and section 25(2)(b), with effect from 1st June, 2004;

paragraph (g) of subsection (2), and the word immediately after paragraph (f) thereof, were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(6), with effect from 14th August, 2003;

subsection (3) was substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(q), with effect from 1st November, 2002;

the words in the first and second pairs of square brackets in subsection (4) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(r)(i), with effect from 1st November, 2002;

paragraph (b) of subsection (4) was substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(r)(ii), with effect from 1st November, 2002;

subsection (5) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(s), with effect from 1st November, 2002;

subsection (6) and subsection (7) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(7), with effect from 14th August, 2003;

subsection (8) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2010, section 3, with effect from 8th November, 2010.

[Co-operation with foreign authorities.]

21A. The Commission shall take such steps as it considers appropriate to co-operate with any person or body –

- (a) who or which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the

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Commission, or

- (b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,

and co-operation under this section may, without limitation, take the form of sharing any information which the Commission may lawfully disclose.]

NOTE

Section 21A was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(t), with effect from 1st November, 2002.

Investigations in support of foreign authorities.

21B. (1) Any relevant power conferred on the Commission by an enactment may, at the request of an authority of a description set out in section 21(2)(d) (the "**requesting authority**"), be exercised for the purpose of enabling or assisting, in the interests of the public or otherwise, the requesting authority to carry out any of its functions; and the provisions of the enactment shall have effect accordingly.

(2) In deciding whether or not to exercise any power by virtue of subsection (1), the Commission shall take into account in particular –

- (a) whether, in the country or territory of the requesting authority, corresponding assistance would be given to the Commission,

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- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick,
- (c) the seriousness of the case and its importance to persons in the Bailiwick,
- (d) whether the disclosure of information to or co-operation with the requesting authority would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question, and
- (e) whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Commission may decide that it will not exercise any power by virtue of subsection (1) unless the requesting authority undertakes to make such contribution towards the cost of its exercise as the Commission considers appropriate.

(4) Where the Commission decides to exercise any power by virtue of subsection (1), it may permit, or it may direct any inspector or other competent person appointed by it to permit, a representative of the requesting authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) A direction shall not be given under subsection (4) unless the

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Commission is satisfied that any information obtained by the requesting authority as a result of the interview will be subject to obligations of confidentiality equivalent to those contained in section 21(1) and (2).

(6) The Commission shall prepare a statement of its policy in respect of the conduct of interviews in relation to which a direction has been given under subsection (4).

(7) A statement of policy under subsection (6) shall be published in such manner as the Commission considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general, subject to such charges (if any) as the Commission may decide to levy to cover the costs of publication.

(8) No direction may be given under subsection (4) before the statement of policy has been published.

(9) In this section –

"relevant power" means any power to make site visits, to require the provision and verification of information and reports and other documents, to take copies of or extracts from documents or require an explanation of them or a statement of their whereabouts, to appoint inspectors or other competent persons, to put questions and require explanations, to make investigations and reports and to require the attendance or assistance of any person,

"requesting authority" has the meaning given by subsection (1).]

*Consolidated text***NOTE**

Section 21B was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 14th August, 2003.

[Site visits.]

21C. (1) The States may by Ordinance make such provision as they think fit in relation to the making by the Commission of site visits in respect of licensees and any other class or description of person prescribed by the Ordinance.

(2) An Ordinance under this section may, without limitation, make provision as to –

- (a) the powers that may be exercised in the course of or in consequence of, or otherwise for the purposes of, site visits,
- (b) the persons who may exercise those powers,
- (c) the purposes for which, and the grounds upon which, site visits may be made or any of those powers may be exercised,
- (d) the premises at which site visits may be made, and
- (e) the penalties, sanctions and other consequences (criminal or otherwise) in respect of –
 - (i) any failure to co-operate with the Commission or any other person exercising or attempting to

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exercise functions under the Ordinance,

- (ii) any other contravention of or failure to comply with the provisions of the Ordinance.

(3) In this section "**licensee**" means, subject to the provisions of any Ordinance hereunder, a person who holds or is deemed to hold, or who has applied for, a licence, consent, registration, permission or authorisation from the Commission under any of the regulatory Laws.

(4) The provisions of this section and of any Ordinance hereunder are in addition and not in derogation from the Commission's statutory functions arising otherwise than by virtue of such provisions.]

NOTES

Section 21C was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 14th August, 2003.

The following Ordinances have been made under section 21C:

Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008;

Financial Services Commission (Site Visits) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

[Information from third parties.]

21D. (1) The Commission and any member, officer and servant of the Commission may, in exercising their respective functions –

- (a) seek and receive information from any person, and

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- (b) take any such information into account in deciding whether and in what manner to exercise their respective functions.

(2) The provisions of subsection (1) are for the avoidance of doubt and are without prejudice to any function conferred by or under any other enactment.]

NOTE

Section 21D was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 14th August, 2003.

[Duties of confidentiality not broken by disclosure to regulators.]

21E. (1) Subject to the provisions of subsection (2), no obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure of information to the Commission or to any such authority as is described in section 21(2)(d) for the purpose of enabling or assisting the Commission or, as the case may be, that authority to carry out any of its functions.

(2) Subsection (1) does not apply in relation to the disclosure by the Commission and by its members, officers and servants of any information referred to in section 21.]

NOTE

Section 21E was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 14th August, 2003.

*Consolidated text**Miscellaneous and general***Liability of members, officers and servants.**

22. No member, officer or servant of the Commission is personally liable in any civil proceedings in respect of anything done or omitted to be done in the discharge or purported discharge of any function of the Commission under this Law, unless the thing is done or omitted to be done in bad faith.

Power of the States to exclude liability.

23. The States may by Ordinance provide that no liability shall be incurred by the States or the Commission, in respect of anything done or omitted to be done after the commencement of such Ordinance in the discharge or purported discharge of any of the functions of the States or the Commission under this Law, unless the thing is done or omitted to be done in bad faith.

NOTE

The following Ordinance has been made under section 23:

Financial Services Commission (Limitation of Liability) Ordinance, 1990.

Interpretation.

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

"**annual report**" means a report made by the Commission pursuant to section 6(1),

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

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"**body**" includes a body incorporated under the law of any State or territory and any unincorporated body,

"**casual vacancy**" means a vacancy arising otherwise than by effluxion of time,

"**Chairman**" means the Chairman of the Commission in accordance with [paragraph 2] of Schedule 1,

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

"**the Committee**" means the States [Policy Council] or such other committee or body as the States may specify by Ordinance,

"**committee of the States**" means any Committee, Board, Authority or Council of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,

["**contravention**" includes failure to comply, and vice versa; and related expressions shall be construed accordingly,]

["**the Court**": see section 11H(10),]

["**disqualification order**": see section 11B(1),]

"**finance business**" includes the carrying on of, and the provision of services in relation to, the business of banking, insurance, investment, and asset management or administration,

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"general functions" has the meaning assigned by section 2(2),

["licensee": see section 11B(3),]

"ordinary member" has the meaning assigned by paragraph [1(3)] of Schedule 1,

["prescribed Laws" means –

- (a) the regulatory Laws,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{ga},
- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^{gb},
- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^{gc},
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007^{gd},

^{ga} Order in Council No. VIII of 1999; Order in Council No. II of 2005; Ordinance XXVIII of 1999, Ordinance XII of 2002, G.S.I. No. 27 of 2002.

^{gb} Order in Council No. VII of 2000; No. II of 2005; and Ordinance No. XXXIII of 2003.

^{gc} Order in Council No. VI of 2002.

^{gd} Approved by Resolution of the States of Guernsey of 30th May, 2007.

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- (f) the Transfer of Funds (Guernsey) Ordinance, 2007^{ge},
- (g) the Transfer of Funds (Alderney) Ordinance, 2007^{gf},
- (h) the Transfer of Funds (Sark) Ordinance, 2007^{gg},
- (i) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark,]

"the public" includes any section of the public, however selected, including, in relation to a body, a section selected as members, debenture holders, policyholders, depositors or investors of, in or with that body,

["regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

^{ge} Approved by the Resolution of the States of Guernsey of 25th July, 2007.

^{gf} Ordinance of the States of Alderney No. VI of 2007.

^{gg} Ordinance of the Chief Pleas of the 5th July, 2007.

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- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (f) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission,
- [(g) the Registration of Non Regulated Financial Services Businesses Law, 2008,]]

["**relevant officer**": see section 11C(3),]

"**the States**" means the States of Guernsey,

"**statutory functions**" has the meaning assigned by section 2(3),

"**Vice-Chairman**" means the Vice-Chairman of the Commission elected in accordance with paragraph 5(1) of Schedule 1,

"**year**" means a calendar year.

- (2) Unless the context otherwise requires –

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- (a) a reference in this Law to a numbered or lettered section, subsection, paragraph or Schedule is a reference to the section, subsection or paragraph of, or to the Schedule to, this Law which is so numbered or lettered,
- (b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to the subsection or paragraph of that provision which is so numbered or lettered,
- (c) a reference in this Law to any enactment includes a reference to that enactment as [from time to time] amended, repealed and replaced, extended or applied by or under any other enactment, including this Law.

(3) The Interpretation (Guernsey) Law, 1948^h applies to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 24,

the word and figure in square brackets in the definition of the expression "Chairman" in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(u)(i), with effect from 1st February, 2003;

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

^h Ordres en Conseil Vol. XIII, p. 355.

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from 6th May, 2004;

the definitions of the expressions "contravention", "the Court", "disqualification order", "licensee", "prescribed Laws" and "relevant officer" in subsection (1) were inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 5, with effect from 30th July, 2008;

the figures in square brackets in the definition of the expression "ordinary member" in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(u)(ii), with effect from 1st February, 2003;

the definition of the expression "regulatory Laws" in subsection (1) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(9), with effect from 14th August, 2003;

paragraph (g) of the definition of the expression "regulatory Laws" in subsection (1) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2009, regulation 1, with effect from 8th June, 2009;

the words in square brackets in paragraph (c) of subsection (2) were inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008, section 6, with effect from 30th July, 2008.

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

[General provisions as to subordinate legislation.]

- 25.** (1) Any Ordinance, regulation or order under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, regulation or order, as the case may be, hereunder,

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- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance –
 - (i) provision as to the creation and punishment of offences,
 - (ii) provision empowering the Commission or the Committee to prescribe by regulation or order anything which may be prescribed under this Law by Ordinance.
- (2) Any power conferred by this Law to make any Ordinance, regulation or order 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

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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.

(3) Any regulation or order made under this Law shall be laid before a meeting of the States as soon as possible after being made; and if at that meeting or the next meeting the States resolve that the regulation or order be annulled, it shall cease to have effect but without prejudice to anything done under it or to the making of a new regulation or order.]

NOTE

Section 25 was substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 14th August, 2003.

Transitional provisions and savings.

26. The provisions set out in Schedule 3 have effect in relation to the transition to this Law from that previously in force.

Citation.

27. This Law may be cited as the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

Commencement.

28. (1) This Law shall come into force on such day as the States may by Ordinance appoint, and different days may be so appointed for different provisions of this Law or for different purposes.

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(2) An Ordinance made under this section may include such savings, and such further transitional provisions, as the States consider necessary or expedient for effecting the transition to this Law from that previously in force.

NOTE

The Law was brought into force on 1st February, 1988 by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (Commencement) Ordinance, 1988, section 1(a), save for sections 6, 18(1)(b) and 18(2)(b), brought into force on 1st January, 1989 by section 1(b) of the same Ordinance.

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SCHEDULE 1 Section 1(3)
THE GUERNSEY FINANCIAL SERVICES COMMISSION

[Members of the Commission.]

1. (1) [The Commission shall consist of –

(a) a minimum of five members, and

(b) a maximum of seven members.]

(2) The members of the Commission (who shall be known as Commissioners) shall be persons elected by the States from persons nominated by the Committee and appearing to the Committee to be persons having knowledge, qualifications or experience appropriate to the [...] supervision of finance business in the Bailiwick.

(3) The members of the Commission other than the Chairman elected under paragraph 2 are referred to in this Schedule as "**ordinary members**".

Chairman of the Commission.

2. (1) The States shall elect (annually and on the arising of a casual vacancy) one of the members of the Commission, nominated in that behalf by the Committee, as Chairman.

(2) A Chairman so elected shall, subject to subparagraphs (3) and (5), hold that office –

(a) for one year from the date of his election to that office, or

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- (b) until he ceases to be a member of the Commission,

whichever is the earlier.

(3) The Chairman may at any time resign his office as such by giving notice in writing, delivered to the Vice-Chairman.

(4) The resignation of a person under subparagraph (3) shall not, in itself, affect his continuance in office as an ordinary member.

(5) An ordinary member elected to fill a casual vacancy in the office of Chairman shall, subject to subparagraph (3) [and paragraph 4(3)], hold office –

- (a) for the unexpired portion of the term of office as Chairman of the person in whose place he was elected,
or

- (b) until he ceases to be a member of the Commission,

whichever is the earlier.

Tenure of office.

3. (1) Each member of the Commission shall, subject to the provisions of paragraph 4, hold office for three years from the date on which he is elected as a member of the Commission.

(2) A member of the Commission whose term of office comes to an end by effluxion of time is eligible, if otherwise qualified, for re-election as a member.

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(3) A member of the Commission shall in any event retire from office on reaching the age of 72 years.

Resignation, removal and casual vacancies.

4. (1) A member of the Commission may at any time resign his office by giving notice in writing delivered to –

- (a) the Chairman (in the case of an ordinary member), or
- (b) the Vice-Chairman (in the case of the Chairman).

(2) If it appears to the Chairman that an ordinary member of the Commission –

- (a) has been absent from three consecutive meetings of the Commission without the Commission's consent,
- (b) has been declared insolvent,
- (c) is incapacitated by physical or mental illness, or
- (d) is otherwise unable or unfit to discharge the functions of a member of the Commission,

the Chairman may declare his office as an ordinary member of the Commission to be vacant, and shall notify that fact as the Chairman thinks fit; and thereupon the office shall become vacant.

(3) If it appears to the States on the recommendation of the

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Committee that any member of the Commission (including the Chairman) –

- (a) has been absent from three consecutive meetings of the Commission without the Commission's consent,
- (b) has been declared insolvent,
- (c) is incapacitated by physical or mental illness, or
- (d) is otherwise unable or unfit to discharge the functions of a member of the Commission,

the States may, on the recommendation of the Committee, declare his office as Chairman or, as the case may be, as a member of the Commission to be vacant; and thereupon the office shall become vacant.

[(4) If the Chairman is dismissed from office pursuant to subparagraph (3), public notice shall be given of the reasons for the dismissal.]

[(5) A person elected to fill a casual vacancy in the office of an ordinary member shall, subject to subparagraphs (1), (2) and (3), hold office for the unexpired portion of the term of office of the person in whose place he was elected.

(6) The validity of any proceedings of the Commission is unaffected by a vacancy in its members, by any defect in the election of a member and by any lack of qualification of a person to act as a member.]]

Vice-Chairman of the Commission.

5. (1) The Commission shall elect annually a Vice-Chairman from the ordinary members; and a Vice-Chairman so elected shall, subject to sub-

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paragraphs (2) and (3) of this paragraph, hold that office for one year from the date of his election to that office or until he ceases to be an ordinary member of the Commission, whichever is the earlier.

(2) The Vice-Chairman may at any time resign his office as such by giving [...] notice in writing, delivered to the Chairman; and the resignation of a person under this sub-paragraph shall not, in itself, affect his continuance in office as an ordinary member.

(3) An ordinary member elected to fill a casual vacancy in the office of Vice-Chairman shall hold office, subject to sub-paragraph (2) of this paragraph, for the unexpired portion of the term of office as Vice-Chairman of the person in whose place he is elected, or until he ceases to be an ordinary member of the Commission, whichever is the earlier.

Oath of office.

6. (1) Every member of the Commission shall, before discharging any function under this Law, take an oath or make an affirmation before the Royal Court sitting as an Ordinary Court in such form as the Royal Court may from time to time by order prescribe.

(2) A member of the Commission who violates an oath or affirmation which he is required to take or make under this paragraph is guilty of an offence and liable –

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

*Consolidated text***Remuneration etc. of members.**

7. The Commission shall –

- (a) pay to its members such expenses as it may from time to time determine, and
- (b) pay to its [...] members such remuneration, if any, as the Committee may from time to time by resolution determine.

Procedure at meetings.

8. At a meeting of the Commission –

- [(a) a quorum is the nearest whole number above one half of the number of commissioners (including, for the avoidance of doubt, the Chairman) for the time being in office,
- (b) the person presiding shall be –
 - (i) the Chairman, if he is present,
 - (ii) if the Chairman is not present, the Vice-Chairman, if he is present,
 - (iii) if the Chairman and Vice-Chairman are not present, the person elected to chair the meeting by, and from among, the ordinary members present,]

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- (c) each member other than the person presiding has one vote,
- (d) the person presiding has no original vote, but in the event of an equality in the votes of the other members present he shall exercise a casting vote,
- (e) ...

Disclosure of interest.

9. (1) A member of the Commission who has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter shall disclose the nature of his interest at a meeting of the Commission and the disclosure shall be recorded in the minutes of the Commission.

(2) For the purposes of this paragraph a general notice given by a member of the Commission to the effect that he is a member, or director, of a specified company or firm and is to be regarded as interested in any matter concerning that company or firm is a sufficient disclosure in relation to any such matter.

(3) A member of the Commission need not attend in person at a meeting of the Commission in order to make any disclosure required under this paragraph if he makes disclosure by a notice in writing delivered to the Chairman and that notice is brought to the attention of every meeting of the Commission at which such deliberations as are referred to in sub-paragraph (1) of this paragraph are to take place and before those deliberations commence.

*Consolidated text***Advisory committees.**

10. (1) The Commission may from time to time appoint a committee to advise the Commission as to such matters concerning the exercise of the Commission's [...] functions[, and any other matter of relevance to the Commission,] as the Commission thinks fit.

(2) The Commission may from time to time –

- (a) appoint any person (whether or not he is a member of the Commission) to serve on a committee appointed under this paragraph,
- (b) remove any person so appointed from such a committee,
- (c) discharge or reconstitute such a committee,
- (d) redefine, or add to, the terms of reference of such a committee.

(3) Subject to any directions given by the Commission, a committee appointed under this paragraph may regulate its own procedure.

Transaction of business without meeting.

11. The Commission may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Commission, and a resolution in writing approved in writing by a majority of the members of the Commission shall be as valid and effectual as if passed at a meeting of the Commission by the votes of the members so approving the resolution.

*Consolidated text***Minutes.**

12. The Commission shall keep proper minutes of its proceedings. including minutes of any business transacted as permitted by paragraph 11 of this Schedule.

Residual power to regulate procedure.

13. Subject to the provisions of this Law the Commission may regulate its own procedure.

[Amendment by Ordinance of Schedule.

14. (1) The States may by Ordinance amend the provisions of this Schedule.

(2) An Ordinance under this paragraph –

(a) may be amended or repealed by a subsequent Ordinance hereunder,

(b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient.]

NOTES

In Schedule 1,

paragraph 1, paragraph 2, paragraph 3 and paragraph 4 were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(v), with effect from 1st February, 2003;

paragraph 1(1) was substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005, section 2, with effect from 1st January, 2006;

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the words omitted in square brackets in paragraph 1(2) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008, section 7, with effect from 28th October, 2008;

the words in square brackets in paragraph 2(5) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005, section 3, with effect from 1st January, 2006;

paragraph 4(4) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(11), with effect from 14th August, 2003;

paragraph 4(5) and paragraph 4(6) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005, section 4, with effect from 1st January, 2006;

the words omitted in square brackets in paragraph 5(2) were repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(w), with effect from 1st November, 2002;

the words in square brackets in paragraph 6(2)(b) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989;

the word and figure in square brackets within the square brackets in paragraph 6(2)(b) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(x), with effect from 1st November, 2002;

the word omitted in square brackets in paragraph 7(b) was repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(y), with effect from 1st February, 2003;

paragraph 8(a) and paragraph 8(b) were substituted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005, section 5, with effect from 1st January, 2006;¹

paragraph 8(e) was repealed by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(aa), with effect from 1st February, 2003;

the word omitted in the first pair of square brackets in paragraph 10(1) was repealed, and the words in the second pair of square brackets therein were inserted, by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, respectively section 1(bb)(i) and section 1(bb)(ii), with effect from 1st November, 2002;

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paragraph 14 was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(cc), with effect from 1st November, 2002.

The following Ordinance has been made under Schedule 1:

Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005.

The following Order has been made by the Royal Court under Schedule 1:

Financial Services Commission (Form of Oath) Order, 1988.

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SCHEDULE 2

Section 3(3)

AMENDMENTS TO OTHER ENACTMENTS

The Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936

1. In section 3(3)(a) of the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936, for "the States Advisory and Finance Committee (hereinafter referred to as "the Committee")"ⁱ substitute "the Guernsey Financial Services Commission (hereinafter referred to as "the Commission")".

2. In section 3(3)(b) and section 3(4) of that Law, for "the Committee", wherever appearing, substitute "the Commission".

3. Immediately after section 3(3)(b)(iv) of that Law insert –

"(v) such assurance company has paid to the Commission such fee as the States Advisory and Finance Committee may from time to time prescribe by regulations made under this section."

4. Immediately after section 3(3A) of that Law^j insert the following additional subsection –

"(3B) Regulations made under this section shall be laid before a meeting of the States as soon as may be after the regulations are made; and

ⁱ These words, and the references to the Committee in sections 3(3)(b) and 3(4) were substituted by the States Board of Administration (Transfer of Functions) Law, 1974 (Ordres en Conseil Vol. XXIV, p. 250).

^j Section 3(3A) was inserted by the Road Traffic (Compulsory Third-Party Insurance) (Amendment) (Guernsey) Law, 1983 (Ordre en Conseil No. XVII of 1953).

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if, at that meeting or at the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under the regulations or to the making of new regulations."

The Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950

5. In section (2)(e) of the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950^k, for the reference to the States of Guernsey Advisory and Finance Committee substitute a reference to the Guernsey Financial Services Commission.

The Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969

6. In section 1(2) of the Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969^l, for "by the States Advisory and Finance Committee" substitute "by the Guernsey Financial Services Commission in accordance with any regulations, including regulations prescribing a fee to be paid to that Commission, which may from time to time be made by the States Advisory and Finance Committee under this subsection".

7. Immediately after section 1(2) of that Law insert –

" (2A) Regulations made under subsection (2) of this section shall be laid before a meeting of the States as soon as may be after the regulations are made; and if, at that meeting or at the next meeting, the States resolve

^k Ordres en Conseil Vol. XIV, p. 209; Vol. XVIII, p.. 81; Vol. XXIII, p. 364; No. XIII of 1986.

^l These words were substituted by the States Board of Administration (Transfer of Functions) Law, 1974 (Ordres en Conseil Vol. XXIV, p. 250).

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that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under the regulations or to the making of new regulations."

Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969

8. ...

9. In sections 1(1)(f), 1(1)(h), 1(4), 9, 11 and 12 of that Law, for "the Committee", wherever appearing, substitute "the Commission".

10. ...

11. ...

12. Immediately after the words in section 11(1) of that Law insert –

" , and by such fee as the States Advisory and Finance Committee may from time to time prescribe by regulations made under this section".

13. Immediately after section 15 of that Law insert the following additional section –

"Regulations."

15A. Regulations made under any power conferred by or under this Law shall be laid before a meeting of the States as soon as may be after the regulations are made; and if, at that meeting or at the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under them or to the making of new

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regulations."

The Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972

14. In section 1(5) of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972, for "the States Advisory and Finance Committee"ⁿ substitute "the Guernsey Financial Services Commission, in accordance with any regulations, including regulations prescribing a fee to be paid to that Commission, which may from time to time be made by the States Advisory and Finance Committee under this subsection".

15. Immediately after section 1(5) of that Law insert –

"(5A) Regulations made under subsection (5) of this section shall be laid before a meeting of the States as soon as may be after the regulations are made; and if, at that meeting or at the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under the regulations or to the making of new regulations."

The States Board of Administration (Transfer of Functions) Law, 1974

16. ...

The Protection of Depositors, Companies and Prevention of Fraud (Amendment) (Bailiwick of Guernsey) Law, 1977

17. In the Protection of Depositors, Companies and Prevention of Fraud

ⁿ These words were substituted by the States Board of Administration (Transfer of Functions) Law, 1974 (Ordres en Conseil Vol. XXIV, p. 250).

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(Amendment) (Bailiwick of Guernsey) Law, 1977^P, section 1(a) is repealed.

The Insurance Business (Guernsey) Law, 1986

18. ...

19. ...

20. ...

21. ...

22. ...

23. ...

24. ...

The Protection of Investors (Bailiwick of Guernsey) Law, 1987

25. In the Protection of Investors (Bailiwick of Guernsey) Law, 1987, except –

(a) in sections 21(1), 29(1)(c)(i), 29(2)(a), 29(3), 37 and 43(2), and

(b) in the definition of "the Committee" in section 44(1),

for "the Committee", wherever appearing, substitute "the Commission".

^P Ordres en Conseil Vol. XXVI, p. 225.

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26. In section 4(1)(a) of that Law, after "subsections (2) and (3) of this section" insert "and to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987".

27. In sections 4(1)(b) and 8(3)(b) of that Law, for "subject to section 35" substitute "subject to section 35 of this Law and to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987".

28. In section 8(3)(a) of that Law, after "subsection (4) of this section" insert "and subject to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987".

29. In section 36(2)(b) of that Law, for "President" substitute "Chairman".

30. In section 37 of that Law, immediately after "the Committee", wherever occurring, insert "or the Commission".

31. In section 44(1) of that Law, immediately before the definition of "the Committee" insert the following additional definition –

"the Commission" means the Guernsey Financial Services Commission, established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;".

NOTES

In Schedule 2,

paragraph 8, paragraph 10 and paragraph 11 were repealed by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 57(d),

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with effect from 1st October, 1994;

paragraph 16 was repealed by the States Committees (Constitution and Amendment) (Guernsey) Law, 1991, section 4, Schedule, paragraph 5, with effect from 20th January, 1992;

paragraphs 18 to 24 were repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002.

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SCHEDULE 3

Section 26

TRANSITIONAL PROVISIONS AND SAVINGS

Application and interpretation

1. (1) This Schedule shall have effect upon the commencement of section 3 of this Law in relation to anything done or commenced before the commencement of that section.

(2) In this Schedule "**transferred functions**" means a statutory function transferred to the Commission by section 3 of this Law.

(3) Paragraphs 5, 6, 7, 8 and 12 of this Schedule shall apply as if section 3 of this Law had been in force on the date in question in each of those paragraphs.

Rights, liabilities and agreements

2. All rights, liabilities and obligations of the Committee arising out of the exercise by the Committee of a transferred function shall become the rights, liabilities and obligations of the Commission.

3. Any agreement entered into by the Committee in connection with a transferred function shall have effect as if the Commission were a party to it in lieu of the Committee and as if any reference therein to the Committee were, in relation to anything to be done after the commencement of section 3 of this Law, a reference to the Commission.

Uncompleted matters etc.

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4. Nothing done by the Committee under or in consequence of a transferred function shall be invalidated by the commencement of section 3 of this Law; and anything commenced by the Committee under or in consequence of a transferred function may be carried on and completed by the Commission.

Licences, conditions etc.

5. Any licence, authorisation, certificate, registration, consent, waiver or permission granted, issued, made or given by the Committee under a transferred function shall be deemed to have been granted, issued, made or given by the Commission on the date when it was in fact granted, issued, made or given.

6. Any condition, restriction or requirement imposed by the Committee under a transferred function shall be deemed to have been imposed by the Commission on the date on which it was in fact imposed.

Pending and refused applications

7. Any application made to the Committee under an enactment conferring a transferred function, which has not been finally determined or withdrawn, shall be deemed to have been made to the Commission on the date when it was in fact made.

8. Any application which has been refused by the Committee, or which has been granted by the Committee subject to conditions, under a transferred function shall be deemed (for the purposes of the right of any person to make representations or to institute or prosecute an appeal, as well as for all other purposes) to have been refused, or to have been granted subject to those conditions, as the case may be, by the Commission on the date on which it was in fact refused or granted subject to those conditions.

*Consolidated text**Legal proceedings*

9. Any legal proceedings in relation to a transferred function to which the Committee is a party may be continued as if the Commission were a party thereto in lieu of the Committee.

10. Any criminal investigation or prosecution may be instituted or continued, and any punishment may be imposed, as if this Law had not been passed.

Requirements and information

11. Any requirement made by the Committee for the purposes of a transferred function shall be deemed to be a requirement made by the Commission.

12. Any information given or statement made to the Committee and every document deposited with the Committee, shall be deemed to have been given or made to, or deposited with, the Commission on the date when it was in fact given, made or deposited.

Lists etc.

13. Any list or register required to be established and maintained, and any other record required to be kept, by the Committee under a transferred function shall immediately be delivered to the Commission and shall thereafter be deemed to have been established and maintained, or kept, by the Commission.

¹ Prior to its substitution, paragraph 8(a) was amended by the Financial

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Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1(z), with effect from 1st February, 2003.

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