



CONSULTATION PAPER

A PROPOSED EXTENSION OF THE COMMISSION'S ENFORCEMENT POWERS AND IMPROVING RIGHTS OF APPEAL FROM DECISIONS OF THE COMMISSION

INTRODUCTION

1. During the last two years the Commission has considered the efficiency and range of its enforcement powers and the ability of aggrieved persons to appeal against our decisions. This consideration has taken place against the background of a change in policy by the Commission to adopt, wherever possible, a more principles-based approach to regulation. The Commission is conscious that its enforcement powers are not sufficiently proportionate either in comparison with other regulatory bodies or in the context of changing to a principles-based framework. In such a framework more responsibility is placed on financial services businesses and, consequently, there is more risk to customers of those businesses and the reputation of the Bailiwick. The Commission considers that this greater potential risk should be offset by a wider range of sanctions which would allow a more flexible and proportionate response to failures by regulated persons.
2. In tandem with improved enforcement powers, the Commission proposes that the arrangements for the external and independent review of its regulatory decisions should be improved and put on a statutory basis. The Guernsey Financial Services Tribunal was established on a voluntary, interim basis to provide licensees and licence applicants with a full review before legislation could be put in place and, in the Commission's view, it is important to give the replacement arrangements for review by the Royal Court statutory authority. In this context, it is important to note that the Commission has also considered its internal processes so as to seek against any unfair decision being made. These internal arrangements will mean that, in addition to several senior executives of the Commission being involved, via a two-stage committee process in an adverse decision against a regulated person, at least two Commissioners will also be involved.
3. What the Commission does not wish to change, however, is the close and constructive working relationship which it has with the Bailiwick's finance sector. The Commission does not envisage that the proposals in this consultation paper would adversely affect that relationship, which it is committed to maintaining.

ENFORCEMENT POWERS

General

4. The Commission administers the following regulatory laws:
 - (a) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended ("the Financial Services Commission Law")
 - (b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended ("the Protection of Investors Law")
 - (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended ("the Banking Supervision Law")
 - (d) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended ("the Regulation of Fiduciaries Law")

- (e) the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended (“the Insurance Business Law”)
 - (f) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended. (“the Insurance Managers and Insurance Intermediaries Law”)
5. The Commission’s existing enforcement powers under the regulatory laws referred to in paragraph 4 include:-
- (a) the imposition of such conditions as the Commission thinks fit on a licence or authorisation;
 - (b) the prohibition of directors and other officers of regulated institutions from employment in specified positions within the regulated finance sector or from employment in the sector;
 - (c) the appointment of inspectors at the expense of a licensee to investigate matters pertaining to that licensee;
 - (d) the suspension of the licence or authorisation of a regulated institution;
 - (e) the issue of a direction to a regulated institution pending the revocation of a licence or expiry of a licence;
 - (f) the revocation of the licence or authorisation of a regulated institution.
6. The use of any of the Commission’s enforcement powers is subject to statutory and practical checks and balances (including an appeals process) to ensure they are used appropriately. The statutory and non-statutory checks and balances include consideration by a committee comprising representatives of the regulatory Division(s) of the Commission which, on a day to day basis, regulate the entity in respect of which remedial action is being considered; access to an independent, non-statutory tribunal chaired by a Queen’s Counsel and assisted by a panel of assessors with experience of Guernsey’s finance sector; consideration by the Commissioners who make the final decision on cases and an appeal to the court. These processes are available in respect of any potential adverse decision taken by the Commission. It is desirable to merge the appeals procedures provided by the non-statutory tribunal and the court into one statutory process. Proposals for expanding the statutory rights of appeal available to persons aggrieved by the Commission’s decisions are covered later in this consultation paper.
7. The Commission has comparatively few enforcement powers compared with other regulatory bodies and it has few enforcement powers which do not involve direct action against the livelihood of a person or institution. The Commission’s standard enforcement activity includes the imposition of conditions, which include preventing regulated persons from taking on new customers, and, under most of the regulatory laws, the appointment of inspectors at the regulated person’s expense. The one regulatory law which does not provide for the appointment of inspectors paid for by a regulated person is the Protection of Investors Law. The inclusion of such a provision formed part of the Commission’s consultation with the finance sector in December 2006 on amendments to the Protection of Investors Law, the Financial Services Commission Law and the Insider Dealing Law.
8. In considering the efficiency of its enforcement powers, the Commission has reviewed the history of actions it has taken to remedy problems within regulated

persons during the last five years. There is a widely held assumption that all regulated entities always operate in a professional manner, that they are always well run, and that, when these standards are not met, observation of the fact by the Commission followed by a formal letter will in itself remedy a problem. Unfortunately, this has not always been the case.

9. Regulated institutions are not always willing to deal with problems, particularly where they are significant. Where there are significant problems, perhaps resulting from difficulties caused by, a head count freeze, senior management not being fully aware of the risks to the institution, or senior management being prone to procrastination, boards and senior management can be – unsurprisingly – reluctant to recognise and accept responsibility for the institution’s and their actions and to deal swiftly with the Commission’s concerns. Formal correspondence and the use of the existing enforcement powers specified in paragraph 5 have not always led to remedial measures being undertaken swiftly. This is because in some cases the powers do not appear to be a proportionate and direct way for the Commission to express concern about problems and of addressing management failings in a way which engages the attention of institutions. The strongest powers – the ability to revoke licences and to prohibit people from employment in the finance sector – focus attention but the effect on peoples’ livelihoods means that they should only be used in a narrow range of situations. The comparatively narrow range of enforcement powers currently available to the Commission means that significant and needless time at the institution and the Commission can be taken up with remedying what can be obvious problems. A different range of enforcement powers would have enabled the Commission to focus the attention of particular institutions and would have placed customers’ and the public – and, therefore, Guernsey’s reputation – at risk for less time.
10. Another factor relevant to considering the Commission’s enforcement powers is the way in which it is moving to a “principles-based” approach to regulation. Recent guidance issued by the Commission has had the effect of passing more responsibility to industry, usually in return for a lighter regulatory environment. For example, the Commission has established a regulatory framework for Qualifying Investor Funds (QIFs). Until the introduction of this framework the Commission vetted the sponsors and the principal parties (such as investment advisers) of all Guernsey collective investment schemes. Under the framework, local fund administrators, rather than the Commission, conduct all the due diligence on the sponsors and principal parties of schemes in which only qualifying investors – as defined in guidance issued by the Commission – may invest. Significant responsibility, both for safeguarding the interests of investors and the reputation of the Bailiwick for high standards, lies with fund administrators when they are accepting new funds. The practical implications of the framework to the Commission are that greater resources are dedicated both to off-site and, especially, on-site monitoring of whether financial institutions are meeting these enhanced responsibilities. The Commission’s experience of monitoring fund administrators’ compliance with the Qualifying Investor Fund framework is that a number of administrators have failed to meet their enhanced responsibilities.

11. It is likely that further responsibility will be transferred to regulated persons. For example, in the field of anti-money laundering the Commission envisages that institutions will be required to adopt a risk-based approach. A reduced or simplified approach can be used where the regulated person determines there to be lower risk. Further responsibility for due diligence on the parties to collective investment funds is being transferred from the Commission to fund administrators in light of the conclusions of the working party established to consider the future of investment regulation. The concept of registered funds has recently been introduced for the closed-end fund sector as a matter of policy but it is intended to establish this approach in law for both closed and open-ended funds – local fund administrators have – and, will continue to have – following the introduction of a legal framework for registration, the same responsibilities as those outlined for QIFs above. Consideration is also being given by the States Commerce and Employment Department as to whether Commission officers (acting on behalf of the Policy Council) will continue to evaluate applications to form local companies before they are established. This evaluation by the Commission has discouraged inappropriate individuals from establishing operations in Guernsey but the removal of the evaluation process as part of the proposed streamlining of company formations would mean that regulated persons would be wholly responsible for assessing the suitability of people wishing to form local companies.
12. The key to the success of this evolving regulatory structure is for regulated persons to be able to recognise and address their responsibilities and to react swiftly in the interests of customers, the public and the Bailiwick’s reputation – and also in their own interests. The changing regulatory environment, where responsibility is being passed to regulated persons, means that an increased range of enforcement powers is essential. It will enable the Commission to more easily take a direct, proportionate and dissuasive approach to particular situations to focus the attention of those regulated persons who are not meeting their responsibilities seriously and to indicate the unacceptability of poor policies, procedures and controls which put or may put customers, the public or the reputation of the Bailiwick at risk.
13. Following the review of enforcement actions taken during the last five years, the Commission is of the view that there have been a number of cases where management failings have been of such significance that, had the statutory powers been available, the Commission may have considered levying financial penalties and/or issuing a public statement. The use of such powers may have had one or more of the following advantages:
 - (a) they would have sent a signal that particular failings should not only be remedied but also that they are unacceptable;
 - (b) they would have made the exercise of significant enforcement powers and significant failings by regulated persons transparent to the public;
 - (c) regulated firms, which would have heard through the “grapevine” of serious cases at individual firms in the finance sector, but not of action taken by the Commission, would be made aware that the Commission is fulfilling its statutory functions and taking remedial action in respect of these cases;

- (d) they would have made other financial services businesses and their senior management aware of issues which they should take account of.
14. The cases where powers to levy financial penalties and to issue public statements might have been used during the last five years are listed below:
- (a) the exclusion of income flows from the financial statements of an institution in order to disguise an active firm as a nearly dormant financial services business;
 - (b) a defective warranty to the Commission by an institution that it had undertaken proper due diligence on the sponsor and principal parties to a Qualifying Investor Fund;
 - (c) senior management failing to act on information which indicated significant losses on investor portfolios;
 - (d) over reliance by an institution on third party valuations and the failure of senior management to act on staff concerns about the valuations;
 - (e) failure by an institution to comply with directions issued by the Commission to seek to ensure the proper winding down of the institution;
 - (f) an attempt by a director of an institution to deceive the Commission about a customer relationship;
 - (g) persistent failure by an institution to address breaches of regulatory laws;
 - (h) the sale of products by an institution without a licence issued by the Commission under the relevant regulatory law and without professional indemnity cover;
 - (i) the mis-selling of products by an institution in order to generate commission income;
 - (j) poor Board and management oversight of outsourced functions;
 - (k) the breaching of conditions imposed by the Commission on a licence.
15. In considering its enforcement powers the Commission is mindful of the requirements of the 2003 Forty Recommendations issued by the Financial Action Task Force on Money Laundering (FATF). The Recommendations state that there should be effective, proportionate and dissuasive sanctions available to deal with the persons covered by the Recommendations that fail to comply with anti-money laundering or terrorist financing requirements. Persons covered by the Recommendations include financial services businesses in Guernsey subject to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002 and the Commission's Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism. It is probable that international bodies such as the International Monetary Fund and the FATF would conclude that Guernsey does not comply with the FATF Recommendations on sanctions as, from their perspective, the Commission does not possess an adequate range of enforcement powers.
16. Another factor considered by the Commission is that it is increasingly common for securities regulators to be able to impose penalties – normally fines – in respect of civil insider dealing and market manipulation offences committed by both regulated and unregulated persons. For example, the European Union directive on insider dealing and market manipulation envisages that securities regulators can levy administrative sanctions which are effective, proportionate and

dissuasive. In Guernsey these offences are criminal rather than civil offences, the penalties for which would therefore be issued by the court.

17. The Commission has also noted the enforcement powers available to the UK Financial Services Authority (FSA), the Jersey Financial Services Commission and the Isle of Man Financial Supervision Commission and, in particular, those powers the Commission does not possess.
18. The FSA has the ability to make public statements about regulated persons, levy administrative penalties and levy financial penalties for breaches of the Financial Services and Markets Act. The FSA has discretion as to the level of the penalties which it may levy – no maximum penalty is stipulated in law or otherwise.
19. The Jersey Financial Services Commission has the power to make public statements about both regulated and unregulated persons. The Jersey political authorities will shortly consider legislation which will provide the Jersey Commission with powers to issue administrative fees in situations where for example fees have not been paid or documents not filed by the required date. The Commission is also considering, in the longer term, consulting on increasing its enforcement powers, such as the power to issue punitive financial penalties.
20. Isle of Man legislation permits the issue of public statements by the Isle of Man Financial Supervision Commission about regulated persons. Legislation has also been enacted which establishes the power to make regulations on the levying of both administrative penalties and punitive fines. Regulations came into force in November for levying administrative penalties.
21. Since March 2004 the Isle of Man Insurance and Pensions Authority has had the power to impose administrative and punitive penalties of such amounts as the Supervisor of the Authority considers appropriate and to issue public statements.
22. In light of the foregoing, the Commission has therefore considered whether it is appropriate to extend the regulatory legislation to provide it with statutory power to:
 - (a) make public statements;
 - (b) levy administrative penalties;
 - (c) levy financial penalties for serious breaches of regulatory legislation or rules administered by the Commission.

Public Statements

23. The circumstances in which the Commission is required or entitled to make public regulatory action which has been taken are very limited. Such circumstances are limited to the suspension or revocation of a licence or authorisation, or the prohibition of individuals from employment in the finance sector. The effect of this is threefold.
24. First, from the point of view of customer protection, it can mean that the Commission is unable to alert customers to problems within a regulated person or

to action the Commission has taken as a result of problems. This constraint operates as an impediment both to customer protection and market forces because it means that regulated persons are aware that their problems will not become public knowledge except where they lead to the suspension or revocation of a licence. Even in an extreme case such as revocation, the statutory confidentiality provisions which apply to the Commission make it difficult to publicise anything beyond the simple fact that the licence/authorisation has been revoked. Second, the Commission's inability to make public statements can make it appear as though it is taking no action and is therefore ineffective, whereas the reality is that the Commission is taking action but is unable to publicise the facts. This is important from the perspective of both the public and of regulated institutions. With regard to the latter, in the comparatively small community of Guernsey's finance sector, institutions sometimes do find out about the existence of problems at other regulated entities but they do not see that any action is taken by the Commission to remedy those problems. Third, the revocation of a licence is a last resort, to be used only in the most serious of cases, as, whilst it limits customers' losses, it can destroy peoples' livelihoods – the absence of an explicit, direct significant enforcement power other than the “nuclear” options of revocation or the prohibition of individuals from employment in the finance sector, can make it difficult to focus the attention of a regulated person on taking the remedial actions to resolve serious problems quickly.

25. The ability to issue public statements about failings by regulated persons and individuals employed by regulated entities (including directors for the purposes of this paper) is therefore desirable. The power would need to be used sparingly, where there have been major contraventions of rules or legislation and where publication would be in the interests of the public or customers. Care would need to be taken. For example, a public statement by the Commission could place some licensees in breach of their insurance or reinsurance arrangements, as third parties may be able to claim breach of contract, to the detriment of policyholders. The effects of public statements in a small community would also need to be borne in mind. Even if the power to issue public statements is used sparingly, it is likely that the introduction of such a power would lead to a cultural change within regulated persons as they would no longer be able to rely on their regulatory problems remaining behind closed doors.
26. The power to make public statements about failings by regulated persons and individuals can focus the attention of regulated persons, provide both the public and regulated persons with clear messages that the Commission does take remedial action in response to problems at regulated persons and the unacceptability of particular management failings, and ensure that the Commission does not appear to be ineffective. Clearly, except in the most extreme cases, where it is necessary to prevent customers or the public from suffering loss, the Commission would need to discuss (although not necessarily agree) the contents of a public statement with the persons named in it before issuing it.
27. Any decision to issue a public statement, together with its contents, would need to follow the Commission's formal procedures for taking adverse decisions. A regulated person and any employee named in the statement should also be able to

challenge the Commission's ability to make a public statement or the contents of a statement. The means for this challenge are included under the proposed changes later in this consultation paper to expand the statutory rights of appeal available to persons aggrieved by Commission decisions – the Commission should not have the power to issue public statements until such time as these changes have been implemented. At a meeting with GIBA Council on 13 April the Council suggested that it would not be appropriate for appeals to the Royal Court in connection with the issue by the Commission of a public statement to be public. The representatives of the Commission present at the meeting support this approach provided that the person making the appeal does not wish the appeal to be public and will liaise with the Law Officers' Chambers and the Court on this matter. (For appeals in relation to financial penalties the Commission proposes that the Court should decide whether an appeal should be public or private.) In the extreme cases referred to in paragraph 26, where the Commission issues a public statement without discussion of its contents with the persons named in it, the challenge would be made after the issue of a statement. For such cases the Commission's internal procedures would need to include a requirement to weigh particularly carefully the interests of the regulated person and/or employee compared with the rights of customers and the public, as well as the legal risk to the Commission and its executives of making a decision which can be challenged through the statutory rights of appeal.

Administrative Penalties

28. The objective of administrative penalties is to encourage timely compliance with filing requirements and save staff time – the primary purpose of these proposed penalties is not to raise revenue. The penalties should be strictly administrative in nature, reflecting the time spent by executives in following up outstanding items such as the late filing of financial statements, the late filing of prudential, regulatory or statistical returns or notifications, or the late payment of fees. For administrative penalties to achieve their objective of ensuring timely filings and saving staff time, there should be no scope for waiving them. Any exercise of discretion would need to be subject to detailed procedures and criteria and a right of appeal – these would create more work and potentially, fresh areas of contention. A continuation of the problem leading to the issue of a penalty or a failure to pay the penalty should prompt consideration of other enforcement powers, such as the imposition of a condition.
29. The benefit of imposing administrative penalties is that it focuses the attention of regulated persons on what information or fee is required and when it is required by. At present, there is no practical sanction against regulated persons who are not timely in filing financial statements, returns or notifications, or who pay fees late. The regulatory Divisions of the Commission normally take the view that these are simply administrative matters in respect of which the imposition of conditions on a licence or the use of any of the stronger enforcement measures would not be proportionate.
30. The Commission has reviewed whether there are any issues arising from the finance sector's submission of information to it. The timeliness of the provision of financial statements, returns and fees to the Commission has improved in recent

years and the current level of compliance does not in itself currently justify the introduction and activation of powers to issue administrative penalties.

31. However, the Commission cannot ignore the fact that, if a framework providing for the ability to levy administrative penalties is not in place, Guernsey will be out of step with the expectations of the international regulatory community. In addition, it is possible that the timeliness of the provision of financial statements, returns and fees to the Commission may return to the poor levels seen on occasions in the past. In that event, administrative fines should reduce the amount of time spent by the Commission, and consequent costs for finance businesses, on chasing overdue information and documents. These factors argue in favour of, at the least, introducing enabling legislation which would allow a States of Guernsey body to make regulations for a regime of administrative penalties if it ever became appropriate to apply such penalties. This would allow the Commission to make representations internationally that it has a regime appropriate for Guernsey, that legislation is in place to encourage regulated financial services businesses to have a responsible relationship with the Commission and that the political and regulatory authorities can activate a regime comparatively quickly if circumstances change.

Financial Penalties

32. Financial penalties have an element of discretion and can be significant in value. The aim of these penalties is to punish regulated persons for serious breaches of regulatory rules or legislation and/or to be a deterrent to other firms from committing serious breaches. The imposition of a penalty is typically made public. In order to have a deterrent effect it is usually considered that penalties would need to be significant.
33. The Commission is aware that, from time to time, financial penalties have been set in other jurisdictions at such a high level that they have led to irrational behaviour by firms, such as the taking of excessive and inappropriate actions to prevent the recurrence of a problem. The Commission is also aware that regulators may suffer from “fine inflation” where larger fines are issued because of precedents which have been set. These issues have been of particular concern to the Commission in considering whether or not to seek to introduce a framework for levying financial penalties.
34. The Commission has concluded that it should have the ability to impose financial penalties against regulated persons and individuals employed by regulated entities in order to allow it, in future, to respond proportionately to licensees’ conduct which does not justify closing down a business or removing an individual’s livelihood but nevertheless requires firm regulatory action and affirmation from the Commission that the conduct is not acceptable. Importantly, fines could be used to reprimand a regulated person which has corrected a failing but where the unacceptability of the failing means that the application of another enforcement power, such as the imposition of a condition, is not appropriate. In order for fining powers to be proportionate and dissuasive in the Guernsey context the Commission considers that the maximum penalty should be £200,000, that the Commission should have discretion to set the level of a fine up to that maximum

penalty, and that the name of the fined regulated person or employee should be disclosed except in exceptional cases.

35. The maximum penalty of £200,000 should not lead to irrational behaviour or damage the constructive relationship which the Commission has with industry. In order for the possibility of a fine to be considered by the Commission in any case, a regulated person must first have breached the minimum criteria for licensing, or another legal or enforceable regulatory requirement such as a breach of enforceable rules issued by the Commission. A breach of a code of practice or guidance would not of itself lead to a fine. The Commission proposes that the following factors would be taken into account when considering the level of a fine:
- whether or not the failing was brought to the attention of the Commission by the regulated person;
 - the seriousness of the failing (for example, the seriousness of the consequences of the failing);
 - what efforts have been made to correct the failing and to prevent its recurrence;
 - the financial consequences of the fine to the regulated person (for example, whether it would further disadvantage customers);
 - other fines issued by the Commission, so that decisions taken by the Commission are consistent and proportionate.
36. Whilst fines would primarily be punitive in nature, the Commission anticipates that the placing of information about the fine, the identity of the person fined and the problem leading to the fine in the public domain would have a deterrent effect.
37. As indicated in paragraph 5 the Commission has the ability to prohibit directors and other officers of regulated institutions from occupying positions within the regulated finance sector. This is a significant and severe power since it may have the effect of taking away an individual's livelihood. It does not provide the flexibility of a financial penalty which may be adjusted to be more proportionate to the conduct and circumstances of the individual and the business concerned.
38. The safeguards identified in paragraphs 6 and 27 would apply to the issue of financial penalties. In addition, the structure of a framework for levying punitive penalties would need to contain transparent procedures for ensuring that the Commission would not be perceived in any way as using its fining powers for revenue raising purposes. If financial penalties were to be levied the Commission considers it important for the benefit of the penalty to be returned to the sector or sectors in which the fined person operates – penalties received would be maintained in a segregated account and set against the fee payable by regulated persons in the sector in the following year.

Conclusion regarding Enforcement Powers

39. The Commission suggests that its enforcement powers should be increased from the implementation of the proposed changes to expand rights of appeal available to persons aggrieved by Commission decisions in order to permit:

- (a) the issuing of a public statement about a regulated person or individual employed by a regulated person where there have been contraventions of rules or legislation, or where there is a need to do so to protect the public;
 - (b) the application of financial penalties against regulated persons and individuals employed by a regulated person; and
 - (c) the introduction of enabling legislation for the imposition of administrative penalties which would not be activated unless regulations are made by a States of Guernsey body.
40. The Commission considers that the enforcement framework it is proposing is workable and that it is the right approach for Guernsey. It must also be emphasised that, if the above proposals are ultimately agreed by the States of Guernsey, the Commission is committed to retaining the positive and constructive relationship with industry which it has spent many years building. The Commission does not want to run the risk of undermining its commitment to help industry to contain the costs of compliance. Enforcement powers will, as now, be used only when it is necessary to do so.

IMPROVED RIGHTS OF APPEAL FROM COMMISSION DECISIONS

A New Court Process

41. The European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) contains a number of Articles which guarantee basic human rights and freedoms. These include the right under Article 6(1) of the Convention to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law to determine a person’s civil rights and obligations. Those civil rights may include, under Article 1 of the First Protocol, the right to use the goodwill of a lawful business free from unwarranted interference.
42. In the United Kingdom, the Convention was incorporated into domestic legislation by the Human Rights Act 1998. In the Bailiwick, the Convention is incorporated into domestic legislation by the Human Rights (Bailiwick of Guernsey) Law, 2000 (“the Human Rights Law”), which came into force on 1 September 2006.
43. Under section 6 of the Human Rights Law, it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The term “public authority” includes a court or tribunal and any person discharging functions of a public nature. The Commission considers that, when exercising the functions described in this consultation paper, it is a public authority for the purposes of the Human Rights Law and is therefore obliged to act in a manner compatible with Convention rights in respect of those functions.
44. The Commission was established with both general and statutory functions by the Financial Services Commission Law. The general functions include the taking of “such steps as the Commission considers necessary or expedient for the

development and effective supervision of finance business in the Bailiwick". The Commission's statutory functions include the regulation and supervision of financial services businesses under the regulatory laws specified in paragraph 4 above. Pursuant to these laws, the Commission licenses a large number of diverse financial services businesses throughout the Bailiwick. In addition, individual officers of the Commission act on behalf of the Policy Council in relation to the consideration and approval of applications for consent under the Bailiwick's Control of Borrowing Ordinances.

45. Before the incorporation of the Convention into Guernsey's domestic law, the Commission reviewed its policies and procedures to try to ensure that it acts in a manner compatible with Convention rights.
46. The Commission considers that the rights of appeal open to licensees and other persons affected by its decisions should be broadened to ensure that they are fully compatible with Convention rights. The current grounds for appeal are that the Commission's decision was ultra vires (i.e. was made outside its powers) or was an unreasonable exercise of its powers, rather than appeals necessarily involving a full review of the merits of the Commission's decision.
47. The Commission is of the opinion that, where a right of appeal lies against a decision of the Commission, the review process should be broadened to ensure that aggrieved persons can have the Royal Court conduct a full review of the Commission's decision, rather than a more limited review of whether the decision was ultra vires or an unreasonable exercise of the Commission's powers.
48. In order to comply as far as possible with Convention rights pending the making of the legislative changes proposed in this paper, the Commission has since 2002 arranged for a non-statutory but independent tribunal, the Guernsey Financial Services Tribunal, to be available to review its adverse decisions. This system has operated on a voluntary basis, at the option of the person aggrieved by an adverse decision proposed by the Commission. Where the aggrieved person has taken up that option, the Tribunal has conducted a full review of the Commission's proposed decision and the Commissioners have considered the Tribunal's opinion before making a final decision.
49. Although voluntary, this system has worked well and the fairness and thoroughness of the Tribunal's review has been appreciated by both applicants and the Commission. In establishing the Tribunal, the Commission was fortunate to secure the services of Mr Michael Blair QC. Mr Blair is a senior financial services barrister practicing in London, and was formerly Private Secretary to two Lord Chancellors and General Counsel to the Financial Services Authority. Mr Blair's Chairmanship of the Tribunal, on which he has sat with two lay members appointed for their experience of finance business in the Bailiwick, has ensured a full and impartial review of the Commission decisions which have been referred to the Tribunal.
50. Experience of the reviews conducted by the Tribunal has shown that they have required detailed and specialist knowledge of the type of financial services business in issue. For that reason, Mr Blair as Chairman of the Tribunal has been

assisted by two lay assessors with the relevant experience in each case. The Commission is very grateful for the time and effort Mr Blair and the lay assessors have put into their consideration of the cases referred to them.

51. It has always been clear that the review arrangements needed to be given a statutory basis and one option which has been considered would be to create a statutory Financial Services Tribunal to operate separately from the Royal Court. However, such a free-standing Tribunal would need its own infrastructure and staff and these would have to be funded, either by the finance sector or by taxpayers as a whole.
52. A more straightforward step would be for decisions of the Commission to be reviewed by the Royal Court, with some of the features of the Tribunal incorporated into the Royal Court's jurisdiction for this purpose. This could provide persons aggrieved by decisions of the Commission with the type of full review currently undertaken by the non-statutory Tribunal without creating an additional statutory body and the need for an infrastructure outside that of the Royal Court. One approach would be for the Bailiff to sit with two lay assessors, selected by him from a panel appointed by him for their experience in relevant areas of financial services business. Whilst the Bailiff would be the sole judge of issues of law, he would be advised by the lay assessors on factual matters. It would also be possible, if appropriate in particular cases, for a Lieutenant Bailiff to be appointed to hear particular cases.
53. The improvement of rights of appeal will require the amendment of provisions of the regulatory laws listed in paragraph 4 above. The appealable decisions of the Commission should cover matters such as:
 - (a) the refusal to grant licences/authorisations to applicants;
 - (b) the imposition of conditions on licences/authorisations;
 - (c) the suspension or revocation of licences/authorisations;
 - (d) the appointment of inspectors to a licensee's business;
 - (e) the issue of directions;
 - (f) the refusal of consent to use certain terms such as "bank", "insurance" and "trustee";
 - (g) the refusal to approve a controller of a licensee;
 - (h) the issue of prohibition orders against individuals from carrying out one or more functions in the finance sector.

Following the proposed changes to the appeal process, the Commission will continue to decide all such matters, but in disputed cases that decision will be subject to review by the Royal Court. If the Royal Court disagrees with the Commission's decision, it will be able to quash the decision and remit the matter to the Commission for reconsideration with a direction to correct any procedural failings.

54. With regard to the payment of costs, the Commission envisages that the legislation introducing the new Royal Court review procedure will specify that the Court should decide the allocation of costs for each case between the parties involved with an appeal.

Other Changes to the Regulatory Laws

55. Further changes are desirable to some of the regulatory legislation at this stage, in particular the Banking Supervision and the Protection of Investors Laws so that they are consistent with the regulatory legislation made since these Laws came into force. The following amendments are proposed:

- (a) The Banking Supervision and the Protection of Investors Laws
 - (i) the inclusion of a provision for an appeal against the exercise of the power to obtain information and documents;
 - (ii) the amendment of the existing provisions on statements made under compulsion so that persons making such statements to the Commission can only be prosecuted for making false statements, rather than on the substance of the statement. The provision should include former licensees as well as current licensees for a period of 6 years from the date of ceasing to be a licensee;
 - (iii) the inclusion of a provision to withhold reasons for a decision and a right of appeal against this;
 - (iv) the inclusion, by Ordinance under the existing section 21C of the Financial Services Commission Law, of a provision on on-site inspections – it is also proposed that this provision should be included in the Regulation of Fiduciaries Law. The Insurance Laws already contain provisions on on-site inspections. The Commission considers that the on-site provisions in all the regulatory laws – including the Insurance Laws – should permit the Commission to undertake an on-site inspection for the purpose of carrying out its functions, whether or not such an inspection has been agreed by an institution – this will require an amendment to the Insurance Laws.

- (b) The Banking Supervision Law
 - (i) the inclusion of an appeal where the Commission has appointed an inspector to investigate a licensee or where the inspector decides to investigate another institution;
 - (ii) the inclusion of an appeal against the exercise of the Commission’s power to compel the production of information or documents and/or attendance by individuals to answer questions in order for the Commission to investigate suspected offences;
 - (iii) the inclusion of a requirement to obtain a warrant from the Bailiff before any power to enter premises is exercised;
 - (iv) the inclusion of an appeal against a restriction by the Commission on the sale of shares in a licensee;
 - (v) the inclusion of an appeal against a direction by the Commission in respect of a misleading advertisement;
 - (vi) the inclusion of an appeal against a refusal by the Commission to approve a controller of a licensee who has become a controller in contravention of the provisions of the law or who has become a

controller after the Commission had served a notice of objection to him. (The provision states that he should not become a controller unless he has notified the Commission of his intention to do so and the Commission has notified him it has no objection to him becoming a controller.)

(c) The Protection of Investors Law

- (i) the alteration of the existing provision relating to appeals against a decision by the Commission to require the appellant to take, or to prohibit the appellant from taking, an action. This provision states that from the time of the institution of an appeal against the Commission's decision, that decision will not operate unless and until that decision is confirmed by the Court. It is proposed that this provision should be amended so that the decision remains in place unless and until the condition, direction or order imposed by the Commission is overturned, modified or suspended;
- (ii) the alteration of the existing provisions on the verification by the Commission of information and documents it has received so that it is explicit that verification shall be carried out in such a manner as the Commission may reasonably specify;
- (iii) the alteration of the existing provision that the Commission may impose, vary or revoke conditions on a licence to include the matters that the Commission may have regard to when considering whether to do so. These matters would be based on those in the Regulation of Fiduciaries Law and the two Insurance Laws;
- (iv) amending the provisions on representations concerning decisions of the Commission so that they are based on those in the two Insurance Laws. Where the Commission gives notice of a potential adverse decision – thus giving a person an opportunity to make representations – the existing period of 28 days' notice in the Protection of Investors Law would remain but, rather than being reduced to two days where the Commission considers it necessary, it could be reduced to any period in any case in which the Commission considers it necessary to do so in the interests of the public, clients, investors or potential investors or the reputation of the Bailiwick as a finance centre. If by reason of these interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency the notice period could be dispensed with altogether. Any decision taken by the Commission, such as those decisions specified in paragraph 53 of this paper, would still be subject to the Royal Court appeal process.

(d) The Regulatory Laws

- (i) the amendment of the minimum criteria for licensing in the Banking Supervision Law, the Regulation of Fiduciaries Law

and the Insurance Laws, so that they are as consistent as possible. The wording of the proposed revised minimum criteria for licensing for each of these laws is included in the appendix to this consultation paper. The main changes are:

- (A) to remove the need for the Commission to consider an institution's economic benefit to the Bailiwick. This is no longer appropriate as a regulatory consideration;
 - (B) to widen the requirements for integrity and skill, and fitness and propriety, so that compliance with rules, guidance and instructions issued under legislation other than the regulatory laws can be taken into account. The principal aim of this provision is to be able to take compliance with the rules in the Commission's proposed AML/CFT Handbook into account;
 - (C) to extend the requirement for the business of an institution to be directed by two individuals so that the individuals cannot be close relatives;
 - (D) to permit the Commission to take account of any previous conduct and activities of a person when considering their fitness and propriety instead of conduct and activities relating only to business or financial matters;
 - (E) to include a specific provision on the Commission's ability to reasonably require information so that compliance with the minimum criteria for licensing can be demonstrated.
- (ii) to replace the provisions in the Protection of Investors Law on matters in respect of which the Commission must have regard before granting a licence and the Schedule to the law on fitness and propriety with a new Schedule on minimum criteria for licensing based on the other regulatory laws.

Proposed changes to the existing schedules in the regulatory laws are tracked in the appendix to this consultation paper so that differences to the existing schedules can be easily identified.

56. As stated in paragraph 44 above, as well as the Commission making decisions under regulatory legislation, certain individual officers of the Commission also act on behalf of the Policy Council in relation to the consideration and approval of various matters under the Bailiwick's Control of Borrowing Ordinances. These matters include the following:
- (a) the raising of more than £500,000 in the Bailiwick in a period of twelve months by the issue of shares in a company, units in a unit trust scheme or interests in a limited partnership;
 - (b) the maintenance of a register of shares in respect of a non-Guernsey company;

- (c) the borrowing of a sum of money greater than £500,000 in a period of twelve months;
 - (d) the circulation in the Bailiwick of an offer or sale of securities;
 - (e) the issue of founder shares in a Guernsey or Alderney company;
 - (f) the registration of a Guernsey limited partnership.
57. In addition, the consent of the Commission is required under various Ordinances relating to companies. For example, the Migration of Companies Ordinance, 1997, the Amalgamation of Companies Ordinance, 1997, the Protected Cell Companies Ordinance, 1997 and the Incorporated Cell Companies Ordinance, 2006 provide that the Commission's consent is required for certain companies to migrate to or from the Bailiwick, to amalgamate with other companies and to be formed as protected cell and incorporated cell companies respectively. Criteria for consideration should be included in the Ordinances along the lines of subparagraphs (a) to (c) in paragraph 58.
58. The Commission proposes to discuss with the Policy Council whether adverse decisions in respect of the Control of Borrowing Ordinances, made by the Policy Council, should also be subject to review by the Royal Court. No criteria for the consideration of matters under the Control of Borrowing Ordinances have been published to date despite the Ordinances having been first introduced in 1947. In the interests of greater transparency, however, the Commission proposes that the criteria should include the following:
- (a) the protection of the public interest, including the protection of the public, in the Bailiwick and elsewhere, against financial loss due to dishonesty, incompetence or malpractice;
 - (b) the countering of financial crime and the financing of terrorism in the Bailiwick and elsewhere;
 - (c) the protection and enhancement of the reputation of the Bailiwick as a financial centre.
59. At the same time, the Commission recommends that the opportunity should be taken to repeal those elements of the Control of Borrowing Ordinances which are no longer necessary in a modern economy. In particular, the provisions requiring consent for the borrowing of a sum of money greater than £500,000 in a period of twelve months should be repealed as it is an unnecessary check on commercial activity. Other requirements for consent in the Control of Borrowing legislation which the Commission considers to be unnecessary are the requirements to apply for consent for:
- (a) the issue of partly paid shares in a Bailiwick company or the shares to be registered in the Bailiwick;
 - (b) exchanging or substituting new securities for redeemable securities;
 - (c) the issue of shares where any part of the consideration is the discharge of any capital liability in respect of borrowing;
 - (d) the capitalisation of profits or reserves prior to the issue of any redeemable shares;
 - (e) the issue of any securities other than shares if the company is incorporated in the Bailiwick and the securities are to be registered in the Bailiwick; and

- (f) the issue of securities of any government other than the government of the UK, Guernsey, Alderney, Sark or Jersey, where the securities are to be registered in the Bailiwick.

The intention of these proposed changes to the Control of Borrowing Ordinances is (subject to any amendments arising from the current review of company law by the Commerce and Employment Department) for the only remaining requirements for consent to be those specified at sub-paragraphs (a), (b), (d), (e), and (f) in paragraph 56 above.

- 60. Finally, in order to streamline the Commission's decision-making process the Commission considers that its Decisions Committee, comprised of two Commissioners and either two Directors (which may include the Director-General) or one Director and one Deputy Director, should itself be provided with the authority to make adverse decisions and for such decisions to be deemed to be decisions of the Commission. This will require amendment of the Financial Services Commission Law, which currently provides that adverse decisions relating to licensees must be taken by the Commissioners as a body – they are unable to delegate that function under the Law. The effect of these proposals would be that where the Decisions Committee cannot satisfy itself that a decision should be made in favour of the applicant/licensee/scheme, it would issue an adverse decision as a decision of the Commission. That decision would be appealable to the Royal Court, which, as discussed earlier in this consultation paper, would have the ability to conduct a full review of the Commission's decision.
- 61. The Commission recognises that changes to the appeal mechanisms may have implications for Alderney and Sark, which have their own courts of first instance, and once the outcome of this consultation is known those will require discussion with the political authorities of those islands.

Conclusion Regarding Improved Rights of Appeal

- 62. In summary, the Commission proposes:
 - (a) the broadening of the grounds of appeal against decisions of the Guernsey Financial Services Commission along the lines set out in paragraphs 52 and 53 of this consultation paper;
 - (b) the incorporation of additional rights of appeal to the Royal Court in the regulatory legislation suggested by current interpretation of the Convention;
 - (c) that the Royal Court should be empowered:
 - (i) to review the Commission's decisions in disputed cases affecting financial services businesses;
 - (ii) where it disagrees with the Commission's decision in such cases, to quash the decision and remit the matter to the Commission for reconsideration; and
 - (iii) to allocate the payment of costs between the parties involved with the appeal;

- (d) the updating of the Banking Supervision Law, the Protection of Investors Law, the Regulation of Fiduciaries Law and the Insurance Laws as outlined in paragraph 55 of this consultation paper;
- (e) the amendment of the Control of Borrowing and company legislation to introduce rights of appeal and criteria as described in paragraphs 57 and 58 of this consultation paper;
- (f) the repeal of unnecessary elements of the Control of Borrowing legislation as identified in paragraph 59 of this consultation paper;
- (g) the amendment of the Financial Services Commission Law to enable the Commission's Decisions Committee to take decisions, subject to the right of appeal to the Royal Court.

CONSULTATION

63. Comments on this consultation paper should be provided by the close of business on 18 May to:

Richard Walker
Director of Policy and International Affairs
Guernsey Financial Services Commission
PO Box 128
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey
GY1 3HQ

Please note that copies of responses to this consultation paper will be provided to the Commerce and Employment Department.

APPENDIX

AMENDMENTS TO THE MINIMUM CRITERIA FOR LICENSING IN THE REGULATORY LAWS

**THE BANKING SUPERVISION (BAILIWICK OF GUERNSEY) LAW, 1994,
AS AMENDED**

**SCHEDULE 3 – MINIMUM CRITERIA FOR LICENSING AND
MAINTAINING A LICENCE**

Integrity and skill.

1. The business of the institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on with prudence, ~~and integrity, and with~~ professional skill ~~and integrity~~ appropriate to the nature and scale of its ~~activities-activities~~, and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

1A. In conducting its business the institution shall at all times act in accordance with the Principles of Conduct of Finance Business issued by the Commission, together with any rules, codes, guidance, principles and instructions from time to time issued under this Law and any rules, guidance and instructions issued by the Commission under any other law, as may be applicable to it.

Economic benefit.

2. ~~The Bailiwick is deriving or, in the case of an institution which is not yet carrying on deposit-taking business, will derive economic benefit from the institution's operation to an extent acceptable to the Commission.~~~~Repealed.~~

Directors, etc. to be fit and proper persons.

3. (1) Every person who is, or is to be, a director, controller, partner or manager of the institution is a fit and proper person to hold that position.
- (2) In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to -
- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of that position;
 - (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
 - (c) whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position;
 - (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;

- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
 - (f) his policies, procedures and controls for the vetting of clients and customers and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991;
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000;
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007 [to be considered by the States of Guernsey at its meeting in April];
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007 [this legislation deals with wire transfers – it was issued for consultation to the banking sector in March 2007 and is expected to come into force at the end of 2007.];
 - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick; or
 - (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission;
 - (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced under subparagraph 1A.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities ~~in business or financial matters~~ of the person in question and, in particular, to any evidence that he has-
- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
 - (b) contravened any provision contained in or made under this Law, the Ordinance of 1971, the regulatory laws, any enactment or

statutory instrument relating to money laundering or terrorist financing (and rules, instructions and guidance issued by the Commission in relation thereto) or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services or ~~the management of companies or~~ against financial loss due to the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");

- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on deposit-taking business;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

(a) "conduct and activities" includes any conduct, activity or omission in any jurisdiction,

(b) "offence" includes an offence under the law of another jurisdiction and which would have been an offence in the Bailiwick if the conduct, activity or omission had taken place or been made, in the Bailiwick, and

(c) "enactment" includes any primary or secondary legislation of any jurisdiction.

Business to be directed by at least two individuals.

4. (1) At least two individuals resident in the Bailiwick and of appropriate standing and experience and who are not close relatives shall effectively direct the business of the institution.

(2) For the purposes of sub-paragraph (1) a close relative of a person means

=

(a) his spouse;

(b) his children, stepchildren, parents, step-parents, brothers, sisters,

half-brothers, half-sisters, stepbrothers and stepsisters; and

(c) the spouse of any person within sub-paragraph (2)(b).

Composition of board of directors.

5. In the case of an institution incorporated in the Bailiwick the board of directors shall include such number ~~(if any)~~ of directors with executive responsibility for the management of its business and such number of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the institution and the nature and scale of its operations.

Business to be conducted in prudent manner.

6. (1) The institution conducts or, in the case of an institution which is not yet carrying on deposit-taking business, will conduct its business in a prudent manner.
- (2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain a capital base and appropriate insurance cover -
- (a) of an amount commensurate with the nature and scale of the institution's operations; and
- (b) of an amount and nature sufficient to safeguard the interests of the institution's depositors and potential depositors, having regard to the particular factors mentioned in sub-paragraph (3) and any other factors appearing to the Commission to be relevant.
- (3) The particular factors mentioned in sub-paragraph (2)(b) are-
- (a) the nature and scale of the institution's operations; and
- (b) the risks inherent in those operations and in the operations of any other institution in the same group so far as capable of affecting the institution.
- (4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets will mature, to the factors mentioned in sub-paragraph (3) and to any other factors appearing to the Commission to be relevant.

- (5) For the purposes of sub-paragraph (4) the Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of the institution and the facilities which are available to it and which are capable of providing liquidity within a reasonable period.
- (6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.
- (7) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.
- (8) The records and systems described in sub-paragraph (7) shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Law; and in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the institution's such directors, ~~of the institution as are described in paragraph 5.~~
- (9) Sub-paragraphs (2) to (8) are without prejudice to the generality of sub-paragraph (1).
- (10) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether an institution is to be regarded as conducting its business in a prudent manner, to the following-
 - (a) whether the institution has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
 - (b) the systems of control and record keeping of the institution for business undertaken or contemplated and the provision made by it for the proper maintenance and development of such systems;
 - (c) the complaints history of the institution;:-
 - (d) whether the institution or group structure hinders effective supervision.

Information required by the Commission.

6A. An institution and any person who is, or is to be, a director, controller, partner or manager of the institution shall supply such information as the Commission

may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing.

Power to make regulations.

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

REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES AND COMPANY DIRECTORS, ETC. (BAILIWICK OF GUERNSEY) LAW, 2000, AS AMENDED

SCHEDULE 1 – MINIMUM CRITERIA FOR LICENSING AND MAINTAINING A LICENCE.

Integrity and skill.

1. The business of the applicant or licensed fiduciary is or, in the case of a person who is not yet carrying on a regulated activity, will be carried on with prudence; ~~and integrity, and with~~ professional skill ~~and integrity~~ appropriate to the nature and scale of his activities, and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

~~1A. In conducting his business the applicant or licensed fiduciary shall at all times act in accordance with the Principles of Conduct of Finance Business issued by the Commission, together with any rules, codes, guidance, principles and instructions from time to time issued under this Law and any rules, guidance and instructions issued by the Commission under any other law, as may be applicable to him.~~

Economic benefit.

~~2. In the case of a full fiduciary licence, the Bailiwick or any part thereof is deriving or, in the case of a person who is not yet carrying on a regulated activity, will derive economic benefit from the operation of the applicant or licensed fiduciary to an extent acceptable to the Commission, having regard to the economic circumstances of the islands of the Bailiwick in or from within which the applicant or licensed fiduciary carries on or, as the case may be, proposes to carry on a regulated activity. Repealed.~~

Fit and proper persons.

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

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

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensed fiduciary or (as the case may be) of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of clients of the applicant or licensed fiduciary are, or are likely to be, in any way threatened by his holding a fiduciary licence or that

position;

- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, ~~or~~ the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, the Disclosure (Bailiwick of Guernsey) Law, 2007 [to be considered by the States of Guernsey at its meeting in April], the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007 [legislation deals with wire transfers – it was issued for consultation to the banking sector in March 2007 and is expected to come into force at the end of 2007.], any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick or any other enactment prescribed for the purposes hereof by regulation of the Commission;
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced under subparagraph 1A.

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

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under this Law, the regulatory Laws, any enactment or statutory instrument relating to money laundering or terrorist financing (and rules, instructions and guidance issued by the Commission in relation thereto) or any other

enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -

- (i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities, banking, insurance, investment or other financial services; or
- (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on regulated activities;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

(a) "conduct and activities" includes any conduct, activity or omission in any jurisdiction,

(b) "offence" includes an offence under the law of another jurisdiction and which would have been an offence in the Bailiwick if the conduct, activity or omission had taken place or been made in the Bailiwick, and

(c) "enactment" includes any primary or secondary legislation of any jurisdiction.

Business to be directed by at least two individuals.

4. (1) In the case of a full fiduciary licence, at least two individuals, resident in the Bailiwick and of appropriate standing and experience and who are not close relatives, shall effectively direct the business of the applicant or licensed fiduciary.

(2) For the purposes of sub-paragraph (1) a close relative of a person means -

(a) his spouse;

(b) his children, stepchildren, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters; and

(c) the spouse of any person within sub-paragraph (2)(b).

Composition of board of directors.

4A. Where the applicant or licensed fiduciary is a company the board of directors shall include such number of directors with executive responsibility for the management of its business and such number of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

Business to be conducted in prudent manner.

5. (1) The licensed fiduciary conducts or, in the case of a person who is not yet carrying on a regulated activity, will conduct his business in a prudent manner.

(2) A person shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain a capital base and appropriate insurance cover -

(a) of an amount commensurate with the nature and scale of his operations; and

(b) of an amount and nature sufficient to safeguard the interests of his clients, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Commission to be relevant.

(3) The particular factors mentioned in subparagraph (2)(b) are -

(a) the nature and scale of the person's operations; and

(b) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company.

(4) A person shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between his liquid assets and his actual and contingent liabilities, to the times at which those liabilities will or may fall due and his assets will mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Commission to be relevant. The Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of the person and the

facilities which are available to him and which are capable of providing liquidity within a reasonable period.

(5) In the case of a full fiduciary licence, a person shall not be regarded as conducting his business in a prudent manner unless he makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of his assets (including provision for bad or doubtful debts), for liabilities which will or may fall to be discharged by him and for losses which he will or may incur.

(6) A person shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate accounting and other records of his business and adequate systems of control of his business and records.

(7) The records and systems described in subparagraph (6) shall not be regarded as adequate unless they are such as to enable the business of the person to be prudently managed and the person to comply with the duties imposed on him by or under this Law: and, where the person is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

(8) Subparagraphs (2) to (7) are without prejudice to the generality of subparagraph (1).

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

- (a) in the case of a full fiduciary licence, whether the applicant or licensed fiduciary has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
- (b) the systems of control and record keeping of the applicant or licensed fiduciary for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems;
- (c) the complaints history of the applicant or licensed fiduciary;
- (d) in the case of a full fiduciary licence, whether the organisation or group structure hinders effective supervision.

Information required by the Commission.

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

supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing.

Power to make regulations.

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

THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002

SCHEDULE 7 – MINIMUM CRITERIA FOR LICENSING AND MAINTAINING A LICENCE

Integrity and skill.

1. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on with prudence, and integrity and with professional skill ~~and integrity~~ appropriate to the nature and scale of his activities, and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his business the applicant or licensee shall at all times act in accordance with the Principles of Conduct of ~~F~~finance ~~B~~business issued by the Commission, together with any rules, codes, guidance, principles and instructions from time to time issued under this Law and any guidance notes or international standards relating to insurance and regulation, issued by a body recognised by the Commission and identified in a code issued under this Law and any rules, guidance and instructions issued by the Commission under any other law, as may be applicable to him.

Economic benefit.

2. ~~The economic interests of the Bailiwick or any part thereof are not being jeopardised or, in the case of a person who is not yet carrying on business regulated by this Law, will not be jeopardised by the operation of the applicant or licensee, having regard to the economic circumstances of the islands of the Bailiwick in or from within which the applicant or licensee carries on or, as the case may be, proposes to carry on such business.~~Repealed.

Fit and proper persons.

3. (1) The applicant or licensee is a fit and proper person to hold a licence of the description in question and every person who is, or is to be, a director, controller, partner, manager or general representative of the applicant or licensee is a fit and proper person to hold that position.

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

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of clients or policyholders (or potential clients or policyholders) of the applicant or

licensee, the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position;

- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991;
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000; and
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007 [to be considered by the States of Guernsey at its meeting in April];
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007 [this legislation deals with wire transfers – it was issued for consultation to the banking sector in March 2007 and is expected to come into force at the end of 2007.];
 - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick; or
 - (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission;
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions

referenced under subparagraph 1(2).

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

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under this Law, the regulatory Laws, any enactment or statutory instrument relating to money laundering or terrorist financing (and rules, instructions and guidance issued by the Commission in relation thereto) or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services; or
 - (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

- (a) "conduct and activities" includes any conduct, activity or omission in any jurisdiction.

(b) “offence” includes an offence under the law of another jurisdiction and which would have been an offence in the Bailiwick if the conduct, activity or omission had taken place or been made in the Bailiwick, and

(c) “enactment” includes any primary or secondary legislation of any jurisdiction.

Business to be directed by at least two individuals.

4. (1) At least two individuals of appropriate standing and experience and who are not close relatives shall effectively direct the business of the applicant or licensee.

(2) For the purposes of sub-paragraph (1) a close relative of a person means -

(a) his spouse;

(b) his children, stepchildren, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters; and

(c) the spouse of any person within sub-paragraph (2)(b).

Position of board of directors.

5. (1) In the case of an applicant or licensee -

(a) which is a Guernsey company or an Alderney company; and

(b) which wishes to be licensed under section 7 or (as the case may be) which is licensed under section 7 as an insurer;

the directors shall include at least one director -

(i) who is not an associate (other than a director) of, or associated party (other than a director) in relation to, the company; and

(ii) who is not responsible for the management of the company's business.

(2) The Commission may in its absolute discretion, in any particular case, by written notice waive all or any of the requirements of this paragraph.

Business to be conducted in prudent manner.

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

(2) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain a capital base and appropriate insurance cover -

- (a) of an amount commensurate with the nature and scale of his operations; and
- (b) of an amount and nature sufficient to safeguard the interests of his clients and policyholders, having regard to the particular factors mentioned in subparagraph (2A) and any other factors appearing to the Commission to be relevant.

(2A) The particular factors mentioned in subparagraph (2)(b) are –

- (a) the nature and scale of the person's operations; and
- (b) the risks inherent in those operations.

(3) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate liquidity, having regard to -

- (a) the relationship between his liquid assets and his actual and contingent liabilities;
- (b) the times at which those liabilities will or may fall due and his assets will mature; ~~and~~
- (c) the factors mentioned in subparagraph (2A); and
- (de) any other factors appearing to the Commission to be relevant;

and for the purposes of this subparagraph the Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of that applicant or licensee and the facilities which are available to him and which are capable of providing liquidity within a reasonable period.

(4) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he makes or, as the case may be, will make adequate provision-

- (a) for depreciation or diminution in the value of his assets (including provision for bad or doubtful debts);

(b) for liabilities which will or may fall to be discharged by him; and

(c) for losses which he will or may incur.

(5) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate accounting and other records of his business and adequate systems of control of his business and records.

(6) The records and systems described in subparagraph (5) shall not be regarded as adequate unless they are such as to enable the business of the applicant or licensee to be prudently managed and the applicant or licensee to comply with the duties imposed on him by or under this Law; and, where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

(8) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether an applicant or licensee is to be regarded as conducting his business in a prudent manner, to the following -

(a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;

(b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems;

(c) the complaints history of the applicant or licensee.

Information required by the Commission.

6A. The applicant, licensee and any person who is, or is to be, a director, controller, partner, manager or general representative of the applicant or licensee shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing.

Power to make regulations.

7. The ~~Committee~~ Policy Council may make regulations amending the provisions of this Schedule.

**THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES
(BAILIWICK OF GUERNSEY) LAW, 2002**

**SCHEDULE 4 – MINIMUM CRITERIA FOR LICENSING AND
MAINTAINING A LICENCE**

Integrity and skill.

1. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on with prudence, and integrity and with professional skill ~~and integrity~~ appropriate to the nature and scale of his activities, and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his business the applicant or licensee shall at all times act in accordance with the Principles of Conduct of ~~F~~finance ~~B~~business issued by the Commission, together with any ~~Conduct of Business Rules, and~~ codes, guidance, principles and instructions from time to time issued under this Law and any guidance notes or international standards relating to insurance and regulation, issued by a body recognised by the Commission and identified in a code issued under this Law ~~or international standards, issued by a body recognised by the Commission and identified in a code and any rules, guidance and instructions issued by the Commission under any other law~~, as may be applicable to him.

Economic benefit.

2. ~~The economic interests of the Bailiwick or any part thereof are not being jeopardised or, in the case of a person who is not yet carrying on business regulated by this Law, will not be jeopardised by the operation of the applicant or licensee, having regard to the economic circumstances of the islands of the Bailiwick in or from within which the applicant or licensee carries on or, as the case may be, proposes to carry on such business. Repealed.~~

Fit and proper persons.

3. (1) The applicant or licensee is a fit and proper person to hold a licence of the description in question and every person who is, or is to be, a director, controller, partner, manager or authorised insurance representative of the applicant or licensee is a fit and proper person to hold that position.

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

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;

- (c) whether the interests of clients or policyholders (or potential clients or policyholders) of the applicant or licensee, the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position;
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991;
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
 - ~~(iii)~~ ~~(iii)~~ —the Drug Trafficking (Bailiwick of Guernsey) Law, 2000; ~~and~~
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007 [to be considered by the States of Guernsey at its meeting in April];
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007 [this legislation deals with wire transfers – it was issued for consultation to the banking sector in March 2007 and is expected to come into force at the end of 2007.];
 - (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick; or
 - (vi) ~~(iv)~~ —any other enactment prescribed for the

purposes hereof by regulation of the Commission;

(g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced under subparagraph 1(2).

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

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under this Law, the regulatory Laws, any enactment or statutory instrument relating to money laundering or terrorist financing (and rules, instructions and guidance issued by the Commission in relation thereto) or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services; or
 - (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

(a) “conduct and activities” includes any conduct, activity or omission in any jurisdiction,

(b) “offence” includes an offence under the law of another jurisdiction and which would have been an offence in the Bailiwick if the conduct, activity or omission had taken place or been made in the Bailiwick, and

(c) “enactment” includes any primary or secondary legislation of any jurisdiction.

Business to be directed by at least two individuals.

4. (1) At least two individuals of appropriate standing and experience and who are not close relatives shall; ~~subject to the provisions of subparagraph (2),~~ effectively direct the business of the applicant or licensee.

~~(2) Subparagraph (1) does not apply in the case of a sole trader who, immediately before the date of commencement of this Law, was a registered insurance intermediary under and within the meaning of the Insurance Business (Guernsey) Law, 1986 and who has not, since that date, ceased to be licensed as an insurance intermediary under this Law. Repealed.~~

(3) For the purposes of sub-paragraph (1) a close relative of a person means -

(a) his spouse;

(b) his children, stepchildren, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters; and

(c) the spouse of any person within sub-paragraph (3)(b).

Position of board of directors.

5. (1) Where the applicant or licensee is a company the board of directors shall include such number of directors with executive responsibility for the management of the business and such number of directors without executive responsibility for the management of the business as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

~~In the case of an applicant or licensee –~~

~~(a) which is a Guernsey company or an Alderney company; and~~

~~(b) which wishes to be licensed under section 4 or (as the case may be) which is licensed under section 4 as an insurance manager or insurance intermediary;~~

~~the directors shall include at least one director-~~

~~(i) who is not an associate (other than a director) of, or associated party (other than a director) in relation to, the company; and~~

~~(ii) who is not responsible for the management of the company's business.~~

~~(2) The Commission may in its absolute discretion, in any particular case, by written notice waive all or any of the requirements of this paragraph. Repealed.~~

Business to be conducted in prudent manner.

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

(2) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain-

(a) a capital base and appropriate insurance cover -

(i) of an amount commensurate with the nature and scale of his operations; and

(ii) of an amount and nature sufficient to safeguard the interests of his clients and policyholders, having regard to the particular factors mentioned in subparagraph (2A) and any other factors appearing to the Commission to be relevant; ~~and~~

~~(b) professional indemnity insurance cover in an amount appearing to the Commission to be adequate. repealed.~~

~~(2A) The particular factors mentioned in subparagraph (2)(a)(ii) are -~~

~~(a) the nature and scale of the person's operations; and~~

~~(b) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting~~

the company.

(3) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate liquidity, having regard to -

- (a) the relationship between his liquid assets and his actual and contingent liabilities;
- (b) the times at which those liabilities will or may fall due and his assets will mature; ~~and~~
- (c) the factors mentioned in subparagraph (2A); and
- ~~(d)~~ any other factors appearing to the Commission to be relevant;

and for the purposes of this subparagraph the Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of that applicant or licensee and the facilities which are available to him and which are capable of providing liquidity within a reasonable period.

(4) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he makes or, as the case may be, will make adequate provision-

- (a) for depreciation or diminution in the value of his assets (including provision for bad or doubtful debts);
- (b) for liabilities which will or may fall to be discharged by him; and
- (c) for losses which he will or may incur.

(5) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate accounting and other records of his business and adequate systems of control of his business and records.

(6) The records and systems described in subparagraph (5) shall not be regarded as adequate unless they are such as to enable the business of the applicant or licensee to be prudently managed and the applicant or licensee to comply with the duties imposed on him by or under this Law; and, where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

(7) Subparagraphs (2) to (6) are without prejudice to the generality of subparagraph (1).

(8) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether an applicant or licensee is to be regarded as conducting his business in a prudent manner, to the following -

- (a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
- (b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems;
- (c) the complaints history of the applicant or licensee.

Information required by the Commission.

6A. The applicant, licensee and any person who is, or is to be, a director, controller, partner or manager of the applicant or licensee shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing.

Power to make regulations.

7. The ~~Committee~~Policy Council may make regulations amending the provisions of this Schedule.

**THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW,
1987, AS AMENDED**

**SCHEDULE 4 – FIT AND PROPER PERSONS MINIMUM CRITERIA FOR
LICENSING AND MAINTAINING A LICENCE**

Fit and proper persons.

Fit and proper persons.

1. The applicant or licensee is a fit and proper person to hold a controlled investment business licence and every person who is, or is to be, a director, controller, partner or manager of the applicant or licensee is a fit and proper person to hold that position.

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

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

(b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;

(c) whether the interests of clients or investors (or potential clients or investors), the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position;

(d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;

(e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;

(f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -

(i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991;

(ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;

(iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000;

(iv) ~~(iv)~~ the Terrorism and Crime (Bailiwick of Guernsey)

Law, 2002;

(v) the Disclosure (Bailiwick of Guernsey) Law, 2007 [to be considered by the States of Guernsey at its meeting in April]

(vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007 [legislation deals with wire transfers – it was issued for consultation to the banking sector in March 2007 and is expected to come into force at the end of 2007.]

(vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick; or

(viii) any other enactment prescribed for the purposes hereof by regulation of the Commission.

(g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referenced under subparagraph 2(2).

(2) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities ~~in business or financial matters~~ of the person in question and, in particular, to any evidence that he has -

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

(b) contravened any provision contained in or made under this Law, the regulatory Laws, any enactment or statutory instrument relating to money laundering or terrorist financing (and rules, instructions and guidance issued by the Commission in relation thereto) or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -

(i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services ~~(and in this subparagraph “regulated activities” has the same meaning as in the Regulation of Fiduciaries,~~

~~Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000~~; or

- (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

- (a) "conduct and activities" includes any conduct, activity or omission in any jurisdiction,
- (b) "offence" includes an offence under the law of another jurisdiction and which would have been an offence in the Bailiwick if the conduct, activity or omission had taken place or been made in the Bailiwick, and
- (c) "enactment" includes any primary or secondary legislation of any jurisdiction.

Integrity and skill.

- 2. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on with prudence, and integrity and with professional skill and integrity appropriate to the nature and scale of his activities, and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.
- (2) In conducting his business the applicant or licensee shall at all times act in accordance with the Principles of Conduct of Finance Business issued by the Commission, together with any rules, codes, guidance, principles and instructions from time to time issued under this Law and any rules, guidance and instructions issued by the Commission under any other law, as may be applicable to him.

Business to be directed by at least two individuals.

3. (1) At least two individuals of appropriate standing and experience and who are not close relatives shall effectively direct the business of the applicant or licensee.

(2) For the purposes of sub-paragraph (1) a close relative of a person means
=

(a) his spouse;

(b) his children, stepchildren, parents, step-parents, brothers, sisters, half-brothers, half-sisters, stepbrothers and stepsisters; and

(c) the spouse of any person within sub-paragraph (2)(b).

Composition of board of directors.

4. Where the applicant or licensee is a company the board of directors shall include such number of directors with executive responsibility for the management of its business and such number of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

Business to be conducted in prudent manner.

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

(2) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain a capital base and appropriate insurance cover -

(a) of an amount commensurate with the nature and scale of his operations; and

(b) of an amount and nature sufficient to safeguard the interests of his clients, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Commission to be relevant.

(3) The particular factors mentioned in subparagraph (2)(b) are -

(a) the nature and scale of the person's operations; and

(b) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group so far as capable of affecting the company.

(4) An applicant or licensee shall not be regarded as conducting his

business in a prudent manner unless he maintains or, as the case may be, will maintain adequate liquidity, having regard to -

- (a) the relationship between his liquid assets and his actual and contingent liabilities;
- (b) the times at which those liabilities will or may fall due and his assets will mature;
- (c) the factors mentioned in subparagraph (3); and
- (d) any other factors appearing to the Commission to be relevant;

and for the purposes of this subparagraph the Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of that applicant or licensee and the facilities which are available to him and which are capable of providing liquidity within a reasonable period.

(5) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he makes or, as the case may be, will make adequate provision -

- (a) for depreciation or diminution in the value of his assets (including provision for bad or doubtful debts);
- (b) for liabilities which will or may fall to be discharged by him; and
- (c) for losses which he will or may incur.

(6) An applicant or licensee shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain adequate accounting and other records of his business and adequate systems of control of his business and records.

(7) The records and systems described in subparagraph (6) shall not be regarded as adequate unless they are such as to enable the business of the applicant or licensee to be prudently managed and the applicant or licensee to comply with the duties imposed on him by or under this Law and, where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

(8) Subparagraphs (2) to (7) are without prejudice to the generality of subparagraph (1).

(9) Without prejudice to the generality of the foregoing provisions of this paragraph, the Commission shall also have regard, in determining whether an applicant or licensee is to be regarded as conducting his

business in a prudent manner, to the following -

- (a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
- (b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems;
- (c) the complaints history of the applicant or licensee;
- (d) where the applicant or licensee is a company, whether the organisation or group structure hinders effective supervision.

Information required by the Commission.

6. The applicant, licensee and any person who is, or is to be, a director, controller, partner or manager of the applicant or licensee shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing.

Power to make regulations.

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