PROJET DE LOI

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002

*

[CONSOLIDATED TEXT]

NOTE

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

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No. XXI of 2002 (Ordres en Conseil Vol. XLII(2), p. 766); as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008 (No. XII of 2008); the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008 (No. LI of 2008, Recueil d'Ordonnances Tome XXXIII, p. 61); the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 (No. VIII of 2010); the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 (No. XXXI of 2010); the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011 (No. XXXVI of 2011); the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (No. LV of 2014); the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 (No. ** of 2015); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. ** of 2015); the Insurance Business (Definition of Long Term Business) (Amendment) Regulations, 2004 (G.S.I. No. 33 of 2004); the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 4 of 2008); the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 15 of 2010); the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 83 of 2010); the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2014 (G.S.I. No. 68 of 2014). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Government of Alderney Law, 2004 (No. III of 2005); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617);the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. ** of 2015); the Financial Services Commission (Fees) Regulations, 2014 (G.S.I. No. 94 of 2014); the Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2014 (G.S.I. No. 93 of 2014).

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PROJET DE LOI

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002

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PROJET DE LOI

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002

THE STATES, in pursuance of their Resolution of the 26th day of June, 2002[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I
RESTRICTIONS ON CARRYING ON INSURANCE BUSINESS

Preliminary

General restriction on carrying on insurance business.

1. (1) Subject to section 5, and without prejudice to subsection (4) of this section and sections 3 and 4, a person shall not carry on, or hold himself out as carrying on, insurance business in or from within the Bailiwick unless –

(a) if that business is long term business, that person is licensed by the Commission as an insurer in respect of long term business,

(b) if that business is general business, that person is licensed by the Commission as an insurer in respect of general business.

(2) For the purposes of this Law, except to the extent that in any particular case the Commission may otherwise direct, a person shall be deemed to be holding himself out as carrying on insurance business in or from within the Bailiwick if –

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a Article V of Billet d'État No. XIII of 2002.

(a) by way of business as an insurer, he occupies premises in the Bailiwick or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that he may be contacted at a particular address in the Bailiwick,

(b) he invites a person in the Bailiwick, by issuing an insurance advertisement or otherwise, to enter into or to offer to enter into a contract of insurance, or

(c) he is otherwise seen to be carrying on insurance business in or from within the Bailiwick.

[(2A) However, an insurer of the description set out in paragraph (c) of the definition of "recognised insurer" in Schedule 5 shall not be regarded for the purposes of this Law as carrying on, or holding himself out as carrying on, insurance business in or from within the Bailiwick by reason only of the fact that –

(a) he contacts or visits a client in the Bailiwick at the request of that client, or

(b) he effects or carries out a contract of insurance, other than through a licensed insurance intermediary within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, in consequence of such a request.]

(3) For the purposes of this section an advertisement issued or other invitation made by any person on behalf of or to the order of another person shall be treated as an advertisement issued or other invitation made, as the case may be, by that other person.

(4) Subject to subsection (5), the States may by Ordinance prohibit all licensed insurers or licensed insurers of any specified class from effecting contracts of insurance of any description specified in the Ordinance; and in

the event of an Ordinance being made under this subsection a licensed insurer shall not effect a contract of any description specified in the Ordinance on or after the date of commencement of the Ordinance during the continuance in force of the Ordinance.

(5) An Ordinance under subsection (4) shall not prevent a licensed insurer from effecting a contract in pursuance of an obligation to do so contained in a contract lawfully entered into and subsisting immediately before the date of commencement of the Ordinance; but a licensed insurer who is under an obligation to effect a contract of insurance which, apart from the preceding provisions of this subsection, he would have been prevented by an Ordinance under subsection (4) from effecting, shall notify the Commission in writing of the existence and nature of that obligation within the 14 days next following the date of commencement of that Ordinance or within such longer period as the Commission may in any particular case allow.

(6) A person who contravenes any provision of subsection (1) or (4) is guilty of an offence.

(7) A person who without reasonable excuse fails to give notification to the Commission in accordance with subsection (5) is guilty of an offence.

NOTE

In section 1, subsection (2A) was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011, section 2, with effect from 30th November, 2011.

Long term business and general business.

2. (1) For the purposes of this Law insurance business, including domestic business, is divided into either –

(a) long term business, or

(b) general business.

(2) Subject to subsections (3) and (4) –

(a) **"long term business"** means insurance business of any of the descriptions set out in Schedule 1, and

(b) **"general business"** means insurance business other than long term business.

(3) For the purposes of this Law the effecting or carrying out of a contract whose principal object is within any of the descriptions of long term business set out in Schedule 1 but which contains related and subsidiary provisions which are not within any of those descriptions shall be taken to constitute long term business.

(4) Notwithstanding the provisions of subsections (2) and (3) a licensed insurer may elect to regard a contract of insurance on human life expressed to be for a term of not more than 18 months as general business; and any contract of insurance in relation to which a licensed insurer does so elect shall not for any of the purposes of this Law be taken to constitute long term business.

(5) The [Policy Council] may by regulation amend any of the provisions of Schedule 1.

NOTES

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

The following Regulations have been made under section 2:

Insurance Business (Definition of Long Term Business) (Amendment) Regulations, 2004.

Restriction on carrying on domestic business.

3. (1) Subject to section 5, a person shall not carry on, or hold himself out as carrying on, domestic business in or from within the Bailiwick unless

that person is licensed by the Commission as an insurer in respect of domestic business.

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

Restriction on Bailiwick body carrying on insurance business outside Bailiwick.

4. (1) Subject to section 5, a Bailiwick body shall not carry on, or hold itself out as carrying on, insurance business of any description in or from within a country outside the Bailiwick unless –

(a) it is licensed by the Commission as an insurer in respect of that description of insurance business, and

(b) that business is carried on outside the Bailiwick –

(i) with the written consent of the Commission granted under this section, and

(ii) in accordance with any conditions subject to which that consent has been granted.

(2) An application for the consent of the Commission under subsection (1)(b) shall be made in such form as the Commission may from time to time determine and may be –

(a) granted unconditionally, or

(b) subject to the provisions of section 61, granted conditionally or refused.

(3) In determining an application under subsection (2) the Commission may have regard to any matter to which it might have regard under section 7 or 14 when considering whether or not to grant an application from the licensed insurer concerned for a licence or whether or not to revoke a licence held by that licensed insurer; and where the Commission decides –

(a) to refuse consent under subsection (1)(b),

(b) subject to the provisions of section 61, to revoke any such consent, or

(c) subject to the provisions of section 61, to impose, vary or rescind any condition in respect of any such consent,

the Commission shall serve upon the licensed insurer concerned notice in writing of the decision setting out (where appropriate) particulars of the condition in question.

(4) A notice under subsection (3) shall state the grounds of the Commission's decision and shall give particulars of the right of appeal conferred by section 63.

(5) Where –

(a) a ground for a decision mentioned in subsection (3) is that any criterion of paragraph 3 of Schedule 7 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) a condition of a consent under subsection (1)(b) requires the removal or replacement of any person as a director, controller, partner, manager, employee, general representative, auditor or actuary,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (3) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 63.

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

Exemptions from sections 1, 3 and 4.

5. Sections 1, 3 and 4 do not apply to insurance business carried on by –

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

(b) an organisation representative of employers or an organisation representative of employees recognised by the Commission as being such an organisation for the purposes of this paragraph, where the insurance business carried on by that organisation is limited to the provision for its members ordinarily resident in the Bailiwick of provident benefits or strike benefits, or

(c) an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994[b], if that business is financial loss insurance business carried on solely in the course of carrying on, and for the purposes of, banking business [or

(d) in the case of sections 1 and 3, and in relation to insurance of any description required to be effected and maintained by or under the third party insurance enactments, an insurer of the description set out in paragraph (c) of the definition of "recognised insurer" in Schedule 5, but only in circumstances where the insurer falls within the disregard provided by section 1(2A)].

NOTE

In section 5, paragraph (d), and the word in square brackets immediately after paragraph (c) thereof, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011, section 3, with

b Order in Council. No. XIII of 1994.

effect from 30th November, 2011.

Licensing of insurers

Application for insurance licence.

6. (1) A person wishing to be licensed as an insurer shall apply in that behalf to the Commission.

(2) An application under this section shall state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on insurance business.

(3) An application under this section shall be made in such form and manner as the Commission may by regulation determine and shall be accompanied by –

(a) a statement of the applicant's proposed insurance business,

(b) such other information and documents as the Commission may reasonably require for the purpose of determining the application,

(c) the appropriate fee prescribed by regulations under section 94, and

(d) anything else prescribed by regulations under this subsection.

(4) Upon receipt of an application under this section and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be a director, controller, manager, partner or general representative of the applicant to provide such additional information and documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) –

(a) to provide a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on such aspects of that information or statement as the Commission may specify,

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

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

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

(8) Before deciding whether or not to grant an application under this section the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on insurance business in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the [Policy and Performance Committee] of the Chief Pleas of Sark.

(9) If there is any change to any of the information supplied to the Commission by or on behalf of an applicant for the purposes of an application under this section (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission, before the application is granted or refused, of the change; and a

failure to do so shall, without prejudice to the generality of any other provision of this Law, be a ground for the refusal or revocation of a licence.

NOTES

In section 6, the words "Policy and Performance Committee" in square brackets in subsection (8) were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015.[1]

The following Regulations have been made under section 6:

Insurance Business (Licensing) Regulations, 2010.

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.[2]

Grant or refusal of insurance licence.

7. (1) The Commission may, upon receipt of an application under section 6 from a person wishing to be licensed as an insurer –

(a) grant the application, or

(b) subject to the provisions of section 61, refuse to grant the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application under section 6 unless –

(a) the Commission is satisfied that the criteria specified in Schedule 7 are fulfilled –

(i) in relation to the applicant, and

(ii) in relation to any person who is or is to be a

director, controller, partner, manager or general representative of the applicant,

(b) the Commission is satisfied that the applicant intends, upon being licensed, to carry on insurance business in or from within the Bailiwick,

(c) the applicant has disclosed to the satisfaction of the Commission such information as the Commission has requested of it in relation to persons who will, upon the licensing of the applicant, have any proprietary, financial or other interest in or connection with the applicant,

(d) the Commission is satisfied that the applicant will, upon being licensed, fulfil the requirements of section 29(1) as to the person to act as the applicant's general representative,

[(e) the Commission is satisfied that the applicant will, upon being licensed, have capital resources which will enable it to comply with the relevant provisions of any rules of the Commission under sections 38A to 38C, unless the Commission proposes to modify the requirements of those provisions in respect of the applicant under section 30(2),]

(f) where the applicant –

(i) is a company, the Commission is satisfied that it has a share capital of such amount that will enable it, upon being licensed, to comply with section 32(1)(a),

(ii) is not a company, the Commission is satisfied that it has a level of non-distributable funds that

will enable it, upon being licensed, to comply with section 32(1)(b),

unless in either case the Commission proposes to modify the requirements of that section in respect of the applicant under section 32(4),

(g) where the applicant is a company, the Commission is satisfied that, in relation to every person who is or is to be a controller of the applicant –

(i) the interests of the public and of the applicant's policyholders and potential policyholders and the reputation of the Bailiwick as a finance centre would not in any manner be jeopardised by that person being or becoming a controller of the description in question of the applicant, and

(ii) without prejudice to subparagraph (i), having regard to that person's likely influence on the applicant as a controller of the description in question, the criteria of Schedule 7 would be fulfilled in relation to that applicant or, if any of those criteria were not so fulfilled, that that person would be likely to undertake remedial action,

(h) where the application is for a licence in respect of –

(i) long term business by a person other than a protected cell company, that person is not already licensed in respect of general business, or

(ii) general business by a person other than a

protected cell company, that person is not already licensed in respect of long term business,

except where the application is for a licence in respect of business, approved by the Commission, which is or will be incidental, in terms of premium income, to the principal insurance business of the applicant,

(i) the Commission is satisfied that the interests of the public and of the applicant's policyholders and potential policyholders and the reputation of the Bailiwick as a finance centre would not be jeopardised by the applicant acting as an insurer, and

(j) the Commission has no grounds to believe that it would not be in the best economic interests of the Bailiwick for the applicant to be licensed so to act.

(3) In considering whether or not to grant an application under section 6, the Commission –

(a) shall take into account such written guidance of a general character and shall act in accordance with such written directions of a general character as may be given by the [Policy Council] under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987[c] in relation to insurance business, and

(b) may take into account –

(i) any guidance notes or international standards

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

relating to insurance and regulation issued by a body recognised by the Commission and identified in a code issued under this Law;

(ii) the provisions of any code issued under this Law, and

(iii) any matter to which it may have regard under section 14 when considering whether or not to revoke a licence.

(4) The Commission shall not consider an application for a licence which is not accompanied by the appropriate fee prescribed by regulations under section 94 or which is otherwise not made in accordance with the provisions of this Law.

(5) Where the Commission decides to refuse to grant a licence, the Commission shall serve upon the applicant, in accordance with the provisions of section 60, notice in writing of the decision.

NOTES

In section 7,

paragraph (e) of subsection (2) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 2, with effect from 1st May, 2015;

the word in square brackets in subsection (3) was substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

Insurance licence.

8. (1) Upon approving an application under section 6 from a person wishing to be licensed as an insurer the Commission shall issue to the applicant a licence in such form and containing such information as the Commission may from time to time determine.

(2) A licensed insurer shall immediately deliver the licence issued to it under subsection (1) to the Commission –

(a) whenever required to do so by the Commission, and

(b) upon the revocation[…] or surrender of the licence.

(3) Except when required by or under subsection (2) to deliver its licence to the Commission, a licensed insurer shall, at its principal place of business in the Bailiwick, at all times during ordinary business hours –

(a) make the licence available to any person reasonably requesting to see it, and

(b) if it is licensed for domestic business, display the licence in a prominent position.

(4) The licence remains, at all times, the property of the Commission.

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

NOTE

In section 8, the word omitted in square brackets in paragraph (b) of subsection (2) was repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, Schedule, paragraph 1, with effect from 12th March, 2008.

Period of validity of insurance licence.

9. A licence shall (unless any condition of the licence provides for any other period of duration) continue to be valid until it is […] revoked under section 14 or surrendered under section 15.

NOTE

In section 9, the words omitted in square brackets were repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, Schedule, paragraph 2, with effect from 12th March, 2008.

Power to impose insurance licence.

10. (1) Where the Commission has reasonable grounds to suspect, for whatever reason, that a person who does not hold a licence to carry on insurance business of any particular description is carrying on, or holding himself out as carrying on, insurance business of that description in contravention of section 1, 3 or 4, the Commission may, subject to the provisions of section 61, and without prejudice to any other penalties, powers or proceedings in respect of the contravention (whether arising under this Law or otherwise), impose a licence on that person in respect of that description of insurance business; and thereupon that person shall be deemed to have been granted a licence and shall be a licensed insurer in respect of that description of insurance business for the purposes of this Law.

(2) When a licence is imposed on any person pursuant to subsection (1) in respect of any description of insurance business, that person may not thereafter (except so far as permitted by any provision of this Law) carry on, or hold himself out as carrying on, insurance business of that description –

(a) in or from within the Bailiwick, or

(b) if that person is a Bailiwick body, in or from within any place whatsoever,

otherwise than –

(i) under the authority of, and in accordance with the terms and conditions of, that licence, and

(ii) in compliance with the provisions of this Law.

(3) A licence imposed on a person pursuant to subsection (1)

may, without limitation, and without prejudice to the provisions of section 12 –

(a) prohibit him –

(i) from carrying on, or holding himself out as carrying on, insurance business of any specified description, and

(ii) from making or receiving payments in respect of any specified description of insurance business,

without the prior approval of the Commission, and

(b) without prejudice to the preceding provisions of this section, expressly require him to comply with any provision of this Law, including (without limitation) any provision as to the payment of fees under section 94.

(4) A licence imposed on a person pursuant to subsection (1) shall (unless the licence provides otherwise) be effective from the earlier of –

(a) service upon that person of written confirmation that the licence has been issued, or

(b) 11 a.m. on the day that an announcement that a licence has been so imposed on him is published in La Gazette Officielle.

(5) Where the Commission decides to impose a licence on any person pursuant to subsection (1) otherwise than with his agreement, the Commission shall serve upon that person, in accordance with the provisions of section 60, notice in writing of the decision.

(6) Where an appeal is instituted under section 63 against a

decision of the Commission to impose a licence on any person pursuant to subsection (1), the licence shall not, by reason of the institution of the appeal, cease to be effective pending the final disposal or withdrawal of the appeal unless the Court before which the appeal is instituted, on the application of the person concerned, orders otherwise; and an order under this subsection may be made on such terms and conditions as the Court may direct.

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

General restrictions and requirements for licensed insurers.

11. (1) A licensed insurer shall not –

(a) write business, insurance or otherwise, other than that which conforms, in all material respects, with its current business plan, or

(b) trade in derivatives, [except in accordance with the relevant provisions of any rules of the Commission under sections 38A to 38C,] without the prior written consent of the Commission.

(2) Any proposed material changes in the information contained in a licensed insurer's current business plan (or in the original application for a licence, if no business plan has yet been submitted) shall be notified to the Commission prior to the implementation thereof.

[(2A) A licensed insurer shall, before effecting any portfolio transfer, notify the Commission of the proposed transfer and obtain the Commission's prior written approval thereto.]

(3) [Subject to subsection (3A), a] Current Personal Questionnaire shall be lodged with the Commission by every licensed insurer in respect of all persons who are of any of the following descriptions –

(a) a director of the insurer for the time being holding

office,

(b) a controller of the insurer for the time being, and

(c) a person of such other description as may be prescribed by regulations of the Commission.

[(3A) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer from all or any requirements of subsection (3), either generally or in any particular case or class of case.]

(4) A licensed insurer shall comply with this Law (and any Ordinance, regulation or rule under it) and all applicable codes issued from time to time under this Law; and any failure by a licensed insurer so to comply shall (without prejudice to any other penalty or sanction in respect thereof) have effect for the purposes of this Law as a contravention of a condition of that insurer's licence.

(5) In respect of a licensed insurer which is a protected cell company, and without prejudice to the Commission's power to impose conditions in respect of a protected cell company under section 7 of the Protected Cell Companies Ordinance, 1997[d] –

(a) no new cell shall be created without the prior written consent of the Commission,

(b) no new insurance business which creates –

(i) a liability attributable to a particular cell of the company, or

(ii) a liability solely of the company's non-cellular assets,

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d Ordinance No. V of 1997; amended by No. XV of 1998.

to persons who are not associated parties of the insurer shall be written without the prior written consent of the Commission,

[(c) the capital resources in respect of the company shall be calculated in such manner as the Commission may specify (which may differ from the relevant provisions of any rules of the Commission under sections 38A to 38C),]

(d) general business and long term business shall not be underwritten –

(i) in the same cell, or

(ii) so as to create liabilities in respect of both of those descriptions of business solely in respect of the company's non-cellular assets.

(6) Without prejudice to any other provision of this Law, a licensed insurer shall, before effecting any change of any director, controller, partner, manager or general representative, notify the Commission of the proposed change and obtain the Commission's written approval thereto: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer from all or any of the requirements of this subsection, either generally or in any particular case or class of case.

(7) For the purposes of subsection (6), the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of receipt by the Commission of written notification of the proposed change unless, before the expiration of that period, the Commission serves notice on the licensed insurer concerned that it does not approve the change.

NOTES

In section 11,

first, the words in square brackets in paragraph (b) of subsection (1) and, second, paragraph (c) of subsection (5) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, respectively section 3 and section 4, with effect from 1st May, 2015;

first, subsection (2A), second, the words in square brackets in subsection (3) and, third, subsection (3A) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, respectively section 3, section 4 and section 5, with effect from 12th March, 2008.

The Protected Cell Companies Ordinance, 1997 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(l), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Conditions of insurance licence.

12. (1) The Commission may, subject to the provisions of section 61, when granting a licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensed insurers generally, to any class of licensed insurer or to any particular licensed insurer.

(3) The Commission may, subject to the provisions of section 61, vary or rescind any condition of a licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a licence may make provision as to the duration of the licence and for the protection of the public, the policyholders and potential policyholders of the licensed insurer and the reputation of the Bailiwick as a finance centre; and conditions may (without limitation) –

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

particular way,

(b) impose limitations on the acceptance or carrying on of insurance business,

(c) prohibit the licensed insurer from soliciting (whether at all or in any specified manner) insurance business, either generally or from particular persons or classes of persons,

(d) prohibit the licensed insurer from entering into any other transaction or class of transactions,

(e) require the removal of any director, controller, manager, partner, employee or general representative of the licensed insurer,

(f) specify requirements to be fulfilled otherwise than by action taken by the licensed insurer,

(g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,

(h) require the licensed insurer to maintain in the Bailiwick, or to transfer to and keep in the custody of a bank specified in the condition, assets of such value and description as may be specified therein; and any such condition may provide that –

(i) assets kept in the custody of a bank pursuant to that condition shall not, so long as the condition is in force, be removed from the

bank or be made the subject of any charge, security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission,

(ii) any charge, security interest, trust, assignment, lien or other dealing purportedly created, executed or entered into by the licensed insurer in contravention of that condition shall be ineffective against any claim by any liquidator of the licensed insurer (and such a condition shall be effective in law against third parties notwithstanding any rule of law to the contrary),

(i) require an actuarial investigation into the technical reserves of a licensed insurer carrying on general business,

(j) require a licensed insurer to establish and maintain technical reserves, on whatever basis the Commission determines prudential, over and above those required by Recognised Accounting Standards,

(k) require a licensed insurer to provide evidence of compliance with any condition or direction issued by the Commission in whatever form and manner and at whatever time the Commission may reasonably determine,

(l) require a licensed insurer to prepare consolidated accounts in addition to the accounts required to be prepared by virtue of section 35,

(m) require a licensed insurer to appoint a compliance officer with responsibility, under the terms of his

appointment, for ensuring compliance by the licensee with the provisions of this Law (and any Ordinance, regulation or rule made under it),

(n) require a licensed insurer to deposit with the Commission, and to comply with, a recovery plan.

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

(6) The contravention of a condition of a licence shall, whether or not constituting an offence under subsection (5), be a ground for the […] revocation of the licence but shall not of itself invalidate any contract entered into or transaction completed before the date of […] revocation.

(7) A licensed insurer whose licence is subject to a condition as to its duration may apply under section 6 for a new licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 or 14 when considering whether or not to grant an application for a licence or to revoke a licence.

(9) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a licence and the date from which any such condition is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the policyholders and potential policyholders of the licensed insurer and the reputation of the Bailiwick as a finance centre.

(10) Where the Commission decides, otherwise than with the agreement of the licensed insurer concerned, to impose, vary or rescind any condition in respect of a licence, the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing

of the decision setting out particulars of the condition in question.

NOTE

In section 12, the words omitted in square brackets in subsection (6) were repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, Schedule, paragraph 3, with effect from 12th March, 2008.

Suspension of insurance licence.

13. …

NOTE

Section 13 was repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, with effect from 12th March, 2008.

Revocation of insurance licence.

14. (1) The Commission may, subject to the provisions of section 61, revoke a licence held by a licensed insurer if it appears to the Commission that –

(a) any of the criteria of Schedule 7 are not or have not been fulfilled –

(i) in relation to the licensed insurer, or

(ii) in relation to any person who is or is to be a director, controller, partner, manager, general representative or employee of the licensed insurer,

(b) the licensed insurer or any other person described in paragraph (a)(ii) –

(i) has contravened or committed an offence under any provision of this Law or any Ordinance,

regulation or rule made under it, or

(ii) has contravened any prohibition, restriction, condition, requirement, code, duty, direction or arrangement under any such provision,

(c) a person has become a controller, partner or director of the licensed insurer in contravention of section 25 or has become or continued to be a controller, partner or director after being given notice of objection under section 25 or 26,

(d) the Commission has been provided with false, misleading, deceptive or inaccurate information under or for the purposes of this Law (or any Ordinance, regulation or rule made under it) –

(i) by or on behalf of the licensed insurer, or

(ii) by or on behalf of a person who is or is to be a director, controller, partner, manager, general representative or employee of the licensed insurer,

(e) the interests of the public or of the policyholders or potential policyholders of the licensed insurer or the reputation of the Bailiwick as a finance centre are in any way jeopardised, whether by the manner in which the licensed insurer is conducting or proposes to conduct its affairs or for any other reason,

(f) any fee prescribed by regulations under section 94 payable by the licensed insurer or payable in respect of the licence has not been paid,

(g) a relevant supervisory authority in a country outside

the Bailiwick has withdrawn from the licensed insurer an authorisation corresponding to a licence under this Law,

(h) a composition or arrangement with creditors has been made in respect of the licensed insurer, or a receiver has been appointed in respect of, or possession has been taken of, any property of the licensed insurer by or on behalf of its creditors or the holders of debentures issued by it,

(i) where the licensed insurer is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which, in the opinion of the Commission, corresponds as nearly as may be to any event described in paragraph (h), (k), (l) or (m),

(j) the licensed insurer has not carried on insurance business within a period of 12 months beginning on the day on which the licence was granted or, having so carried on insurance business, has subsequently not done so for any period of more than 12 consecutive months,

(k) a declaration of insolvency has been made in respect of the licensed insurer or the affairs of the licensed insurer have been declared in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,

(l) an interim vesting order has been made against the licensed insurer in respect of any real property in the Bailiwick,

(m) otherwise than for the sole purpose of solvent

amalgamation, solvent reconstruction or solvent winding-up, a liquidator (provisional or otherwise) has been appointed to act in relation to the estate or affairs of the licensed insurer or the licensed insurer has passed a special resolution requiring it to be wound up voluntarily, or

(n) the insurer's general representative has failed to satisfy an obligation to which he is subject by virtue of this Law.

(2) In considering whether or not to revoke a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 when considering whether or not to grant an application for a licence.

(3) A decision of the Commission to revoke a licence shall not, subject to the provisions of subsection (4), have effect until the end of the period within which, under section 63, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

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

(a) in the interests of the public or of the policyholders or potential policyholders of a licensed insurer, or

(b) for the protection or enhancement of the reputation of the Bailiwick as a finance centre,

the Commission may apply to the Court for an order under this subsection directing that its decision to revoke a licence should, without prejudice to any appeal in respect of the decision under section 63, have immediate effect; and the Court may make an order under this subsection on such terms as it thinks just.

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

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

(a) where the licensed insurer in relation to the licence of which the order is sought –

(i) is an Alderney company, or

(ii) is not an Alderney company or a Guernsey company but has its principal place of business in Alderney,

the Court of Alderney,

(b) where the licensed insurer in relation to the licence of which the order is sought is not an Alderney company or a Guernsey company but has its principal place of business in Sark, the Court of the Seneschal,

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

(7) Where the Commission decides, otherwise than with the agreement of the licensed insurer concerned, to revoke a licence, the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision.

Surrender of insurance licence.

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

(2) A surrender shall take effect, subject to the provisions of subsection (5), upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the licensed insurer may by a further

notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

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

(4) The Commission may, on receipt of an application under subsection (3), and subject to the provisions of section 61, decide not to allow the surrender of a licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender shall not have effect before the end of the period within which, under section 63, an appeal can be brought or, if an appeal is brought within that period, before the appeal is finally disposed of or withdrawn.

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

(6) The Commission may, subject to the provisions of section 61, refuse its consent to the surrender of a licence –

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

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

(c) if the name of the licensed insurer would not, immediately after the surrender, comply with the requirements of section 18.

(7) Where the Commission decides –

(a) not to allow the surrender of a licence to be withdrawn, or

(b) not to give consent to the surrender of a licence,

the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision.

Directions to insurers

Directions to licensed insurers.

16. (1) The Commission may, subject to the provisions of section 61 –

(a) when serving notice under section […] 14 upon a licensed insurer that the Commission has decided to […] revoke its licence,

(b) at any time after such a notice has been served (whether before or after the licence is […] revoked),

(c) at any time after a licensed insurer has served a notice under section 15 surrendering its licence (whether or not the Commission has consented to the surrender under section 15(5)), or

(d) in the case of a licensed insurer whose licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter,

give the insurer such directions as appear to the Commission to be desirable in the interests of the public, the policyholders and potential policyholders of the insurer and the reputation of the Bailiwick as a finance centre, whether for the purpose of

safeguarding assets or otherwise.

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

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

(b) prohibit or impose limitations upon the carrying on of insurance business and other business,

(c) prohibit the licensed insurer from soliciting any new business,

(d) prohibit the licensed insurer from entering into any other transaction or class of transactions,

(e) require the removal of any director, controller, partner, manager, employee, general representative, auditor or actuary.

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

(a) the Commission serves upon the licensed insurer concerned notice in writing that it no longer proposes to […] revoke its licence, or

(b) the Commission's decision to […] revoke the licence is reversed on appeal under section 63.

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

have effect –

(a) if the Commission allows the licensed insurer, under section 15(3), to withdraw the surrender of its licence, or

(b) in cases where the Commission decides not to allow the licensed insurer, under section 15(3), to withdraw the surrender of its licence, if the Commission's decision is set aside on appeal under section 63.

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

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

(7) The Commission may, subject to the provisions of section 61, vary or rescind any direction under subsection (1) by notice in writing served upon the licensed insurer concerned.

(8) The Commission may give public notice of the imposition, variation or rescission of a direction under subsection (1) and the date from which any such direction is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the policyholders and potential policyholders of the licensed insurer to whom the direction was given and the reputation of the Bailiwick as a finance centre.

(9) Where the Commission decides, otherwise than with the consent of the licensed insurer concerned, to impose, vary or rescind a direction under subsection (1), the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision setting out the terms of the direction in question.

NOTE

In section 16, the words omitted in square brackets in, first, paragraph (a) of subsection (1), second, paragraph (b) of subsection (1) and, third, subsection (3) were repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, Schedule, respectively paragraph 4, paragraph 5 and paragraph 6, with effect from 12th March, 2008.

Information as to insurers

List of, and information as to, licensed insurers.

17. (1) The Commission shall –

(a) establish and maintain, in such form as the Commission may determine, a list of all insurers who are for the time being licensed insurers,

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

(c) publish a copy of the list on the Commission's official website.

(2) The list maintained under subsection (1) shall contain, in relation to each licensed insurer –

(a) the name of the insurer,

(b) the addresses or principal places of business of the insurer in the Bailiwick,

(c) indications as to whether the insurer is licensed in respect of –

(i) long term business,

(ii) general business,

(d) an indication as to whether the insurer is licensed in respect of domestic business,

[(e) unless the Commission determines otherwise, details of –

(i) the fact of any conditions of the licence or directions restricting the acceptance of new business; and

(ii) the fact of any condition of the insurer's licence imposed under section 12(4)(h) providing that any assets shall not be made the subject of any charge, security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission; and]

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

(3) …

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

(a) whether in consequence of –

(i) any grant of a licence under section 7 or […] revocation or surrender of a licence under section […] 14 or 15, or

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

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

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

(5) …

(6) Without prejudice to [the preceding provisions of this section], the Commission may give public notice of the fact that –

(a) a particular insurer has ceased to be a licensed insurer, whether by virtue of the revocation, surrender or expiry of the licence or otherwise […],

(b) a particular person –

(i) is not a licensed insurer or has not been a licensed insurer, or

(ii) has been granted or refused a licence,

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and of the policyholders or potential policyholders of the insurer or other person in question and the reputation of the Bailiwick as a finance centre.

NOTES

In section 17,

paragraph (e) of subsection (2) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 7, with effect from 12th March, 2008;

subsection (3) and subsection (5) were repealed, and the words in the first pair of square brackets in subsection 96) were inserted, by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 2 and section 3, with effect from 24th February, 2010;

the words omitted in, first, square brackets in subsection (4) and, second, the second pair of square brackets in subsection (6) were repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 6, Schedule, respectively paragraph 7 and paragraph 8, with effect from 12th March, 2008.

PART II
INSURANCE DESCRIPTIONS AND NAMES

Restrictions on use of certain descriptions and names.

18. (1) No person other than –

(a) a licensed insurer, or

(b) a person who has first obtained the permission of the Commission in that behalf under section 19 and who is acting in accordance with the conditions of that permission,

shall –

(i) so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language) –

(A) that he is carrying on insurance business in the Bailiwick or (in the case of a Bailiwick body) that he is carrying on insurance business anywhere, or

(B) that he is a licensed insurer, or

(ii) use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) –

(A) that he is carrying on insurance business in the Bailiwick or (in the case of a Bailiwick body) that he is carrying on insurance business anywhere, or

(B) that he is a licensed insurer.

(2) No person shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed insurer to carry on insurance business.

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

Permission to use certain descriptions or names.

19. (1) A person wishing to obtain permission for the purposes of section 18, 23 or 24 shall apply in that behalf to the Commission.

(2) An application under subsection (1) shall be made in such form and manner and shall be accompanied by such information and documents as the Commission may require; and the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable.

(3) The Commission may, upon receipt of an application under subsection (1) –

(a) grant the application unconditionally, or

(b) subject to the provisions of section 61 –

(i) grant the application subject to such conditions as it may consider necessary or expedient, or

(ii) refuse the application.

(4) Where the Commission decides –

(a) to refuse an application made under subsection (1),

(b) subject to the provisions of section 61, to revoke a permission granted under this section, or

(c) subject as aforesaid, to impose, vary or rescind any condition in respect of any such permission,

it shall give written notice of that decision to the applicant or (as the case may be) the holder of the permission stating the grounds of the Commission's decision and setting out particulars of the right of appeal conferred by section 63.

Commission may object to certain names.

20. (1) An applicant for a licence under this Law shall give notice in writing to the Commission of its name and of any name it is using or proposing to use for the purposes of or in connection with any business carried on by it and the Commission may, subject to the provisions of section 61, by notice in writing served upon it, object to that name.

(2) Where a licensed insurer proposes to change its name or any name it uses for the purposes of or in connection with any business carried on by it, or to use a name for the purposes of or in connection with any business carried on by it, it shall give notice in writing to the Commission of the proposed name and the Commission may, subject to the provisions of section 61, within a period of 56 days immediately following the receipt by it of such notice, by notice in writing served upon the licensed insurer object to the proposed name.

(3) The Commission may also, subject to the provisions of section 61, give notice objecting to a name in cases where the person in question failed to give notice to the Commission in accordance with subsection (1) or (2).

(4) The Commission shall not give notice objecting to a name under subsection (1), (2) or (3) unless it considers that the name is –

(a) misleading to the public (whether because it might induce the public to confuse the person in question with some other person established in the Bailiwick or elsewhere, or for any other reason), or

(b) otherwise undesirable.

(5) For the purposes of this section –

(a) the whole of the name in question shall be taken into account in deciding whether it is misleading or undesirable, but

(b) no objection may be made to so much of the name as the person in question is entitled to use by virtue of the preceding provisions of this Law.

(6) Where as a result of a material change in circumstances since the time when notice was given to the Commission under subsection (1) or (2) or as a result of further information becoming available to the Commission since that time, it appears to the Commission that a name to which it might have objected under that subsection gives so misleading an indication of the nature of the activities of the person in question as to be likely to cause harm to the public, the Commission may, subject to the provisions of section 61, by notice in writing served upon that person, object to that name.

Provisions as to notices under section 20.

21. (1) A notice to be given to the Commission under section 20 shall be given in such manner and form as the Commission may specify and shall be accompanied by such information and documents as the Commission may require.

(2) A notice of objection under section 20 shall state the grounds of the Commission's objection and give particulars of the right of appeal conferred by section 63.

(3) A notice of objection –

(a) under section 20(1), (2) or (3), may take immediate effect,

(b) under section 20(6), takes effect at the end of the period within which, under section 63, an appeal can be brought or, if an appeal is brought within that period, when the appeal is finally disposed of or withdrawn.

Offences in relation to objections to names.

22. (1) Where the Commission gives notice objecting to a name under section 20, the person upon whom the notice was served shall not use or cause or permit to be used the name for the purposes of or in connection with any business carried on in or from within the Bailiwick after the notice takes effect.

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

Incorporation and change of name of companies.

23. (1) Without prejudice to the provisions of any other enactment –

(a) no application under the Companies (Guernsey) Law, 1994[e] or the Companies (Alderney) Law, 1994[f] to the Royal Court or (as the case may be) the Registrar for the registration of the memorandum of a company in the proposed name of which there appears the word insurance or assurance or any cognate expression, whether in English or any other language, shall be granted unless the applicant establishes that the permission of the Commission in that behalf has been obtained under section 19 or under section 31 of the

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[e] Order in Council No. XXXIII of 1994; No. XIV of 1996; and No. II of 2002.

[f] Order in Council No. XXXIV of 1994.

Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and any conditions subject to which that permission was granted have, so far as practicable, been complied with,

(b) no application under the Companies (Guernsey) Law, 1994 or the Companies (Alderney) Law, 1994 to the Royal Court or (as the case may be) the Court of Alderney for an order confirming a change of company name by the inclusion (whether in English or any other language) of the word insurance or assurance or any cognate expression shall be granted unless the applicant establishes that –

(i) it is a licensed insurer, licensed insurance intermediary or licensed insurance manager, or

(ii) it has obtained the permission of the Commission in that behalf under section 19 or under section 31 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and any conditions subject to which that permission was granted have, so far as practicable, been complied with,

(c) no such application under the said Laws for the registration of the memorandum of a company or for an order confirming a change of company name shall be granted unless the applicant is able to produce a letter from the Commission stating that no notice of objection under section 20 is in force in respect of the proposed name.

(2) The Commission may by regulation amend subsection (1) by adding any word to, or removing any word from, the words the use of which in the

name or proposed name of a company is for the time being regulated by that subsection.

NOTE

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

Applications by Commission for change of company name.

24. (1) Where a Guernsey company or an Alderney company other than –

(a) a licensed insurer, or

(b) a company which has first obtained the permission of the Commission in that behalf under section 19 and which is acting in accordance with the conditions of that permission,

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

(2) Where a Guernsey company or an Alderney company other than –

(a) a licensed insurer, or

(b) a company which has first obtained the permission of the Commission in that behalf under section 19 and which is acting in accordance with the conditions of that permission,

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

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

(a) guilty of an offence, and

(b) liable to be wound up on the application of the Commission under section 94 of the Companies (Guernsey) Law, 1994 or, in the case of an Alderney company, section 125 of the Companies (Alderney) Law, 1994.

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

NOTE

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

PART III
REGULATION OF LICENSED INSURERS

Objections to Controllers

Notification of and objection to controllers, etc.

25. (1) No person shall become a controller of a licensed insurer which is a company, or a partner in a licensed insurer which is a partnership, or a director of a licensed insurer which is an unincorporated body, unless –

(a) he has notified the Commission in writing of his intention to become such a controller, partner or director,

(b) he has, unless the Commission decides to waive the requirements of this paragraph, completed and delivered to the Commission a personal questionnaire in a form to be determined from time to time by the Commission, and

(c) the Commission has notified him in writing that there is no objection to his becoming such a controller, partner or director,

and, for the purposes of paragraph (c), the Commission's written notification that there is no objection to a person becoming such a controller, partner or director shall be deemed to have been given on the expiration of a period of 60 days beginning on the date of compliance by that person with the requirements of paragraphs (a) and (b) and any other requirements imposed under subsection (2) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person.

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

(3) The Commission may, subject to the provisions of section 61, serve a notice of objection under this section if it is not satisfied –

(a) that the person concerned is a fit and proper person to become a controller of, a partner in, or (as the case may be) a director of, the licensed insurer,

(b) that the interests of the public and of the insurer's policyholders or potential policyholders and the reputation of the Bailiwick as a finance centre would not in any other manner be jeopardised by that person becoming such a controller, partner or director, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed insurer as such a controller, partner or director –

(i) the criteria of Schedule 7 would continue to be fulfilled –

(A) in relation to that licensed insurer, and

(B) in relation to any person who is or is to be a director, controller, partner, manager, general representative or employee of that licensed insurer, or

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

(4) A notice of objection under this section shall –

(a) specify the matter mentioned in subsection (3) as to

which the Commission is not satisfied, and

(b) give particulars of the right of appeal conferred by section 63.

Objection to existing controllers, etc.

26. (1) Where in the opinion of the Commission a person who is –

(a) a controller of a licensed insurer which is a company,

(b) a partner in a licensed insurer which is a partnership, or

(c) a director of a licensed insurer which is an unincorporated body,

is not or is no longer a fit and proper person to be such a controller, partner or (as the case may be) director, the Commission may, subject to the provisions of section 61, serve him with a written notice of objection.

(2) A notice of objection under this section shall –

(a) state the grounds for the Commission's objection, and

(b) give particulars of the right of appeal conferred by section 63.

Contraventions by controllers, etc.

27. A person who –

(a) becomes a controller, partner or director in contravention of section 25(1), or

(b) becomes or continues to be a controller, partner or director after a notice of objection has been served on him under section 25 or 26,

is guilty of an offence unless he shows that he was not aware of the acts or circumstances by virtue of which he became a controller, partner or director; but in such a case he shall be guilty of the offence if he fails to give the Commission notice in writing of the fact that he has become a controller, partner or director within a period of 14 days immediately following the day on which he becomes so aware.

Restrictions on sale of shares.

28. (1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of section 25(1) or has become or continued to be such a controller after a notice of objection has been served on him under section 25 or 26.

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

(a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them, shall be void,

(b) no voting right shall be exercisable in respect of those shares,

(c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder,

(d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensed insurer, whether in respect of capital, dividend or otherwise.

(3) The Court, on the application of the Commission, may order the sale of any specified shares to which this section applies and, if the shares are subject to restrictions under subsection (2), that they shall cease to be subject

thereto.

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under section 25 or 26 –

(a) until the end of the period within which, under section 63, an appeal can be brought against the notice of objection, or

(b) if such an appeal is brought within that period, until the appeal is dismissed or withdrawn.

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

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

(a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney,

(b) where the order was made by the Court of the Seneschal, the Prévôt,

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

(7) This section applies –

(a) to all shares in the licensed insurer of which the person in question is a controller of the relevant description which are held by him or any associate of

his and which were not so held immediately before he became such a controller of that licensed insurer, and

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

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

(9) A notice served on the person concerned under subsection (2) shall give particulars of the right of appeal conferred by section 63; and any direction contained in the notice may be varied by a further direction or rescinded by the Commission by notice in writing to that person.

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

(a) where the person against whom the order under subsection (3) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal,

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

NOTE

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

same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

[*Prohibition orders*

Power to make prohibition orders.

28A. (1) If it appears to the Commission, having regard to the provisions of Schedule 7, that an individual is not a fit and proper person to perform functions on behalf of a licensee in relation to an insurance business, the Commission may make an order (a **"prohibition order"**) prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to –

(a) any insurance business;

(b) licensees generally or any specified class of licensee.

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

(4) A licensee shall take reasonable care to ensure that none of his functions, in relation to the carrying on of an insurance business, is performed by a person who is prohibited from performing that function by a prohibition order.

(5) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.

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

NOTE

Section 28A, and the subheading thereto, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 8, with effect from 12th March, 2008.

[List of prohibition orders.

28B. (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions, or description of functions, which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish –

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

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

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

NOTE

Section 28B was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 8, with effect from 12th March, 2008.

[**Right to make representations as to prohibition orders.**

28C. (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing –

(a) stating that the Commission is proposing to make a prohibition order against him,

(b) stating the terms of, and the grounds for, the proposed prohibition order,

(c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine, and

(d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

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

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

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

(a) stating the terms of, and the grounds for, the prohibition order; and

(b) giving particulars of the right of appeal conferred by this Law.]

NOTE

Section 28C was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 8, with effect from 12th March, 2008.

General requirements

General representative of licensed insurer.

29. (1) A licensed insurer shall appoint, and at all times maintain the appointment of, as the insurer's general representative, to act generally on behalf of the insurer and to accept service of any document on behalf of the insurer, either –

(a) a person who is both –

(i) an executive director of the insurer who is (subject to the provisions of subsection (4)) ordinarily resident in Guernsey, Herm or Jethou or, if no such director of the insurer is ordinarily so resident, an employee or agent of the insurer who is (subject as aforesaid) ordinarily resident in Guernsey, Herm or Jethou, and

(ii) approved by the Commission as a fit and proper person to act as the insurer's general representative, or

(b) a licensed insurance manager so approved by the Commission.

(2) Without prejudice to the generality of his functions under subsection (1), the general representative of a licensed insurer shall be responsible for making any return, depositing any accounts, reports and other documents and furnishing any information which, by or under any provision of this Law (or any Ordinance, regulation, rule or code under it), including but not limited to any

conditions or directions imposed under section 12 or 16, he or that insurer is required to make, deposit or furnish to the Commission:

Provided that the Commission may by regulation make such provision as they think fit in relation to the functions and responsibilities of a general representative, including provision amending this section.

(3) The general representative of a licensed insurer shall not resign his position, and the insurer shall not remove him, unless –

(a) a replacement general representative has given the Commission written notice that he has consented to accept the position, or

(b) the Commission has agreed in writing to the resignation or removal of the general representative.

(4) The Commission may in any particular case approve, as a fit and proper person to act as the general representative of an insurer which is an Alderney body or a Sark body, a person who is ordinarily resident in the Island of Alderney or, as the case may be, the Island of Sark.

(5) A licensed insurer [or a general representative of a licensed insurer] which contravenes any provision of this section or of any regulations under it is guilty of an offence.

NOTES

In section 29, the words in square brackets in subsection (5) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 9, with effect from 12th March, 2008;

In accordance with the provisions of the Insurance Business (Adaptation for Members of the Society of Lloyd's) Regulations, 2008, regulation 1, with effect from 8th November, 2008, section 29 does not apply to members of the Society of Lloyd's.

The following Regulations have been made under section 29:

Insurance Business (Duties of General Representatives)

Regulations, 2008.

[**Capital resources of licensed insurer.**

30. (1) Subject to subsection (2), a licensed insurer shall at all times maintain capital resources in accordance with rules of the Commission under sections 38A to 38C.

(2) The Commission may by notice in writing served on an insurer, a class of insurers or insurers generally modify, subject to such conditions, if any, as may be specified in the notice, any prohibition, restriction or requirement relating to capital resources (including, without limitation, the calculation, maintenance and approval thereof) applicable in respect of that insurer, class of insurers or insurers and imposed by or under rules of the Commission under sections 38A to 38C; and for the purposes of this subsection, in deciding whether or not to modify the said prohibition, restriction or requirement, the Commission shall consider –

(a) the nature and classes of business involved,

(b) the spread of risk and the historic and industry based claims data,

(c) the size, complexity of business and business risks of the insurer or insurers concerned, and

(d) any other information which is available to the Commission and which it considers relevant.

(3) The Commission may by notice in writing served on an insurer –

(a) vary or rescind any modification made by it under this section, or

(b) impose, vary or rescind any condition in respect of

any such modification.]

NOTE

Section 30 was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 5, with effect from 1st May, 2015.[3]

Restrictions as to payment of dividends.

31. (1) A licensed insurer which is a company shall not declare or pay any dividend if the declaration or payment would cause the insurer to fail to meet [the capital resources requirements applicable to it by virtue of rules of the Commission under sections 38A to 38C].

(2) When considering the provisions of subsection (1) the directors of the licensed insurer shall (without limitation) have regard to the proposed operations of the insurer in the 12 month period following the proposed declaration or payment of the dividend.

(3) The provisions of this section are in addition to the provisions of section 33 of the Companies (Guernsey) Law, 1994 and sections 61 and 62 of the Companies (Alderney) Law, 1994.

NOTES

In section 31, the words in square brackets in subsection (1) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 6, with effect from 1st May, 2015.

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

Minimum level of paid up capital.

32. (1) Subject to the provisions of this section, a licensed insurer

which –

(a) is a company, shall maintain a paid up share capital of not less than the [Capital Floor] or an equivalent sum in any currency acceptable to the Commission,

(b) is not a company, shall maintain, in a form to be determined by the Commission under section 12, a level of non-distributable funds of not less than the [Capital Floor] or an equivalent sum in any currency acceptable to the Commission.

(2) A licensed insurer which is a company shall maintain minimum shareholders' funds of at least 75% of the [Capital Floor] or an equivalent sum in any currency acceptable to the Commission.

(3) For the purposes of this section the equivalent sum in any currency acceptable to the Commission of the value specified in sterling as the [Capital Floor] shall be calculated in respect of any particular day at the sterling exchange rate prevailing at the close of that day.

[(4) The Commission may by notice in writing served on a licensed insurer modify, subject to such conditions, if any, as may be specified in the notice, any requirement imposed by subsection (1) or (2) as respects that insurer for such amount and on such conditions as the Commission may approve.]

(5) The Commission may by notice in writing served on a licensed insurer –

(a) rescind any modification made by it under this section, or

(b) impose, vary or rescind any condition in respect of any such modification.

(6) In computing, for the purposes of subsection (1), the paid up

share capital of a company, use of the share premium account is permitted.

NOTES

In section 32,

the words "Capital Floor" in square brackets, wherever occurring, were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 7, with effect from 1st May, 2015;

subsection (4) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 12, with effect from 12th March, 2008.

Annual return of licensed insurer.

33. (1) A licensed insurer shall, in respect of each financial year of the insurer, prepare an annual return in such form, containing such particulars and accompanied by such information and documents (which shall be in such form) as the Commission may by regulation require.

(2) Regulations under subsection (1) may, without limitation, require the annual return to include or be accompanied by –

(a) an up-to-date business plan,

[(b) a calculation of the licensed insurer's capital resources required to be maintained in accordance with rules of the Commission under sections 38A to 38C,]

(c) a declaration of reliance on reinsurers, in such form, containing such particulars and accompanied by such information and documents (which shall be in such form) as the Commission may require,

(d) a 12 month financial forecast,

(e) a copy of the auditors' management letter or confirmation from the general representative that the auditors have confirmed that no auditors' management

letter is required to be issued, and

(f) a certificate signed by the general representative confirming –

(i) compliance throughout the period covered by the annual return with [the capital resources requirements applicable to the licensed insurer by virtue of rules of the Commission under sections 38A to 38C],

(ii) compliance throughout the said period with the insurers' code of conduct or any other code issued under this Law,

(iii) that the accounts have been prepared and deposited in accordance with this Law, and

(iv) that, where applicable, an actuarial report has been prepared and deposited in accordance with this Law,

and where the Commission has, under section 12(4)(l), imposed a condition on a licensed insurer requiring the preparation of consolidated accounts, then all the information and documents required by regulations under subsection (1) to be included in or to accompany the insurer's annual return shall be prepared and submitted on a consolidated basis.

(3) A licensed insurer which contravenes any provision of this section is guilty of an offence.

NOTES

In section 33, first, paragraph (b) and, second, the words in square brackets in paragraph (f)(i) of subsection (2) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, respectively section 8 and section 9, with effect from 1st May, 2015.

The following Regulations have been made under section 33:

Insurance Business (Annual Return) Regulations, 2008.

The following Regulations have effect as if made under section 33:

Insurance Business (Accounts, Annual Return and Approved Eurobonds) Regulations, 1987.

Appointment of auditors.

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

(2) A licensed insurer making an appointment under this section shall forthwith give the Commission written notice stating –

(a) the date of the appointment, and

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

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

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

(a) if the insurer proposes to give special notice to its shareholders of a resolution removing an auditor before the expiration of his term of office, or

(b) if the insurer gives notice to its shareholders of a

resolution replacing an auditor at the expiration of his term of office.

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

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

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

and a notice under paragraph (a) shall contain –

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

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

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

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

Annual accounts.

35. (1) A licensed insurer shall keep, and have access to in the Bailiwick, accounting records which are sufficient to show and explain the licensed insurer's transactions and which are such as to –

(a) disclose with reasonable accuracy, at any time, the state of affairs of the licensed insurer at that time, and

(b) enable the licensed insurer to prepare annual financial statements in accordance with this section.

(2) A licensed insurer shall prepare from its accounting records, in respect of each financial year, and shall produce to the Commission within a period of four months beginning on the close of each financial year (or such additional time as the Commission may in any particular case allow), such accounts as may be required by the Commission.

(3) The accounts –

(a) shall be prepared in accordance with Recognised Accounting Standards,

(b) shall give a true and fair view of –

(i) the licensed insurer's state of affairs at the balance sheet date, and

(ii) its profit or loss for the financial period ending on that date, and

(c) shall state the Recognised Accounting Standards adopted.

(4) In the event of conflict between –

(a) any requirement of Recognised Accounting Standards, and

(b) any requirement of or under this Law (or any Ordinance, regulation or rule under it), including (without limitation) any requirement arising by virtue

of any condition or direction imposed under this Law,

compliance with the requirements referred to in paragraph (b) shall suffice.

(5) The requirements of the Commission under subsection (2) may –

(a) specify which accounting standards will be Recognised Accounting Standards for the purposes of this section,

(b) specify the form of the accounts required to be prepared by virtue of this section,

(c) specify the information to be included in the accounts required to be prepared by virtue of this section,

(d) permit any information so specified to be given, instead of in the accounts, in a note therein or in a statement or report annexed thereto,

(e) require there to be given in such a note, statement or report such additional information as may be specified,

(f) as respects such accounts, notes, statements and reports and the information contained therein, require there to be given by specified persons and to be annexed to the accounts certificates of such matters as may be specified,

(g) specify the persons by whom the accounts are to be signed,

(h) specify additional requirements in respect of protected cell companies, and

(i) make such other provision –

(i) in relation to accounts and accounting records, and

(ii) for the purposes of the implementation of this section,

as the Commission thinks fit.

(6) Notwithstanding the provisions of this section or of any requirements thereunder, the Commission may in any particular case, by notice in writing served on a licensed insurer –

(a) agree to the preparation of that licensed insurer's accounts in a form other than a form specified by those provisions or requirements,

(b) require that licensed insurer to include in those accounts such additional information as the Commission considers should be so included.

(7) References to accounts in this Part of this Law (including Schedule 3) include references to –

(a) any notes therein and any statements, reports and certificates annexed thereto, and

[(b) in the case of a licensed insurer the assets and liabilities of which are taken for the purposes of rules of the Commission under sections 38A to 38C (with the consent of the Commission given under those rules, where applicable) to include assets and liabilities of a subsidiary of that licensed insurer, accounts dealing with the state of affairs and the profit or loss of the licensed insurer and that subsidiary.]

(8) A person who contravenes any provision of this section or any requirement under it is guilty of an offence.

NOTES

In section 35, paragraph (b) of subsection (7) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 10, with effect from 1st May, 2015.

The following Regulations have effect as if made under section 35:

Insurance Business (Accounts, Annual Return and Approved Eurobonds) Regulations, 1987.

Audit of accounts.

36. (1) The accounts required to be prepared by virtue of section 35 shall be audited by an auditor in accordance with the requirements of Schedule 3; and that auditor shall report on those accounts in accordance with the requirements of that Schedule.

(2) The Commission may by regulation amend any of the provisions of Schedule 3.

NOTE

The following Regulations have been made under section 36:

Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2014.

Deposit of annual return, accounts, etc. with Commission.

37. (1) The annual return required to be prepared by virtue of section 33, the accounts required to be prepared by virtue of section 35, the report of the auditor made in pursuance of section 36 and the actuarial report (if applicable) required to be prepared by virtue of section 41 shall be deposited with the Commission within a period of four months (or such additional time as the Commission may in any particular case allow) beginning on the close of the financial year to which the accounts relate.

(2) The Commission may specify the form of any particular document or of any class of documents required to be deposited with it under subsection (1); and if it does so then the document (or, as the case may be, any document of that class) is deemed not to have been deposited with the Commission until it is deposited in the specified form.

(3) Without prejudice to the provisions of section 33(1) and subsection (1) of this section, where a licensed insurer wishes to change the date of the close of its financial year, and thereby to extend the period of its financial year, it must, unless the Commission directs otherwise in any particular case, submit an annual return in respect of the period up to the anniversary of the end of the period of the last annual return; but for the purposes of this subsection the Commission may, at the request of the insurer, modify the requirements of section 33 and of any regulations thereunder in their application to that insurer.

(4) The Commission shall consider the documents deposited under subsections (1) and (2) and if any such document appears to the Commission to be inaccurate or deficient in any respect the Commission may communicate with the insurer with a view to requiring the correction of any such inaccuracy and the making good of any such deficiency.

(5) A licensed insurer which contravenes any provision of this section is guilty of an offence.

NOTE

The following Regulations have been made under section 37:

Insurance Business (Annual Return) Regulations, 2008.

Friendly societies and insurers authorised in European Economic Area, etc.

38. (1) This Part of this Law applies, subject to the adaptations set out in subsection (2), in relation to –

(a) a friendly society registered under an enactment relating to friendly societies and recognised by the

Commission as being such a society,

(b) a syndicate or pool, and

(c) a person other than a Bailiwick body if –

(i) the law of a State within the European Economic Area, or of any other country recognised by the Commission for the purposes of this section, recognises that person as a national of that or another such State or country, and

(ii) the only insurance business which that person carries on in the Bailiwick is business of a description which that person is authorised to carry on in a State within the European Economic Area or in any other country recognised by the Commission for the purposes of this section and which would be lawfully carried on if it were carried on in that State or country.

(2) The adaptations referred to in subsection (1) of this section are as follows –

(a) a general representative within section 29(1)(a) must be ordinarily resident in the Bailiwick and approved by the Commission under section 29(1)(a)(ii), but need not be an executive director, employee or agent of the insurer,

(b) sections 25 to 28, 30 to 32, 34 to 36 and 39 to 43 do not apply, and

(c) such other adaptations as the Commission may

prescribe by regulation.

(3) This section is without prejudice to sections 12 and [68] to 74, and is not to be construed as restricting the Commission's powers under those sections.

NOTES

In section 38, the figures in square brackets in subsection (3) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 2, with effect from 28th July, 2010.

The following Regulations have been made under section 38:

Insurance Business (Adaptation for Members of the Society of Lloyd's) Regulations, 2008.

[*Making of Rules*

Rules of the Commission.

38A. The Commission may make rules in relation to the carrying on of insurance business by licensed insurers and generally as to the manner in which licensed insurers conduct, or hold themselves out as conducting, their business.]

NOTES

Section 38A, and the cross-heading thereto, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 4, with effect from 24th February, 2010.

The following Rules have been made under section 38A:

Insurance Business (Public Disclosure of Information) Rules, 2010;
Insurance Business (Public Disclosure of Information) (Amendment) Rules, 2010;
Insurance Business (Solvency) Rules, 2015.

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

38B. Rules may, without limitation –

(a) set out general conditions applicable to licensed

insurers (and accordingly make provision for matters in respect of which conditions may be imposed under section 12),

[(b) prescribe the manner in which licensed insurers must conduct, govern, manage and operate their business, and this includes, without limitation, matters relating to –

(i) corporate governance,

(ii) internal controls and reporting,

(iii) the holding of client and policyholder assets,

(iv) financial resources,

(v) technical provisions,

(vi) capital requirements,

(vii) liquidity requirements, and

(viii) the calculation, maintenance and approval of anything described in subparagraphs (iv) to (vii),]

(c) prohibit licensed insurers from carrying on, or holding themselves out as carrying on, insurance business –

(i) of any specified class or description,

(ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or

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

(d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensed insurers of any discretionary powers afforded to them by clients or policyholders,

(e) require licensed insurers to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any insurance business, and specify the powers and duties of persons so employed,

(f) control the relationship between licensed insurers and their servants and agents and, without limitation, require licensed insurers to impose and enforce restrictions on the activities carried on by their servants and agents,

(g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of insurance business,

(h) require specified information to be given in the form and manner and at the time specified by or under the rules –

(i) to the Commission,

(ii) to the public, or

(iii) to any prescribed class or description of persons,

(i) require licensed insurers to make provision for the protection of clients and policyholders in the event of the cessation of any business or any class or description of business carried on by them,

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

(k) make provision as to the settlement of disputes,

(l) require the public disclosure by licensed insurers of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation –

(i) information on the financial position and financial performance of licensed insurers,

(ii) information on the basis, methods and assumptions on which any information is prepared,

(iii) information on risk exposures and the management thereof, and

(iv) information on management and corporate governance, and

(m) make provision as to the dealings and relationship of licensed insurers with other licensed insurers, other persons carrying on insurance business, clients, policyholders and the Commission.]

NOTES

Section 38B was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 4, with effect from 24th February, 2010.

In section 38B, paragraph (b) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 11, with effect from 1st May, 2015.

[*General provisions as to rules*

Making, publication and effect of contravention of rules.

38C. (1) Before making any rules the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or policyholders or potential clients or policyholders, publish proposals for the rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.

(2) Rules shall specify the provisions of this Law under which they are made (and see section 85(7) for further provision as to their making and publication).

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

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

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

(ii) the regulatory Laws,

may take the rule and the contravention thereof into account in determining whether and in what manner to

exercise those powers, and

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

NOTE

Section 38C, and the cross-heading thereto, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 4, with effect from 24th February, 2010.

Special requirements in respect of insurers with domestic business

Audited accounts of insurer with domestic business to be made available to policyholders.

39. (1) A licensed insurer which carries on domestic business shall, subject to subsection (2), make available on request, and on payment of a reasonable sum, to all policyholders and potential policyholders of the insurer copies of the accounts required to be prepared by virtue of section 35 and of the auditor's report thereon made in pursuance of section 36 not later than one month after the close of the period within which those accounts are required to be deposited with the Commission under section 37(1).

(2) The accounts and the report required to be made available under subsection (1) may be so made available in an abridged form approved by the Commission in any particular case containing such information as may be so approved.

Special requirements in respect of insurers with long term business

Appointment of actuary by insurer with long term business.

40. (1) A licensed insurer shall, [unless agreed in writing by the Commission,] not later than the date on which it begins to carry on long term business, appoint an actuary as actuary to the insurer; and whenever an appointment under this section comes to an end the insurer shall as soon as is reasonably practicable, and in any case within a period of 28 days after the day on which that appointment came to an end (or such longer period as the Commission may, in its absolute discretion, by written notice allow), make a fresh appointment of an actuary as actuary to the insurer.

(2) A licensed insurer making an appointment under this section shall forthwith give the Commission written notice stating –

(a) the date of the appointment, and

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

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

(3) If a licensed insurer fails to make a fresh appointment of an actuary in accordance with the provisions of subsection (1), the insurer shall not until such an appointment is made effect any contract which constitutes long term business without the written permission of the Commission.

(4) An actuary of a licensed insurer who resigns or is removed before, or who is not reappointed or does not seek re-appointment upon, the expiration of his term of office shall, within a period of 7 days after the day of the resignation, removal or (as the case may be) expiration of his term of office, send to the Commission –

(a) a statement to the effect that there are no circumstances connected with his ceasing to be actuary which he considers should be brought to the attention

of the Commission, or

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

(5) A licensed insurer which contravenes any provision of subsection (1), (2) or (3) shall be guilty of an offence.

(6) An actuary who without reasonable excuse contravenes any provision of subsection (4) shall be guilty of an offence.

NOTE

In section 40, the words in square brackets in subsection (1) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 13, with effect from 12th March, 2008.

Periodic actuarial investigation of insurer with long term business.

41. (1) A licensed insurer which carries on long term business shall –

(a) cause an investigation and report to be made, in accordance with Relevant Professional Standards, by the person who for the time being is the actuary to the licensed insurer under section 40(1), into the financial condition of the licensed insurer in respect of that business as at the close of every period to which any accounts required to be prepared by virtue of section 35 relate,

(b) where that investigation establishes a deficit on any fund or any part of any fund, immediately cause a transfer to be made from shareholders' funds of sufficient assets to make good the deficit up to the value of all shareholders' funds,

(c) deposit the actuary's report on his investigation with the Commission at the same time as the accounts

required to be deposited under section 37(1), and

(d) not later than one month after the close of the period within which that report is required to be deposited with the Commission, make copies of that report (or of a report in abridged form and containing such information as the Commission may approve) available to all policyholders of the insurer on payment of a reasonable sum.

(2) An investigation to which subsection (1) relates shall include –

(a) a valuation of the liabilities of the insurer attributable to the long term business of the insurer,

(b) the establishment of the surplus, if any, on the insurance funds established under section 42 which, subject to section 43, may be transferred to shareholders' funds and be available for distribution,

(c) the establishment of the deficit, if any, on the insurance funds established under section 42.

Separation of assets and liabilities attributable to long term business.

42. (1) Where a licensed insurer carries on long term business –

(a) the insurer shall maintain an account in respect of that business, and

(b) the receipts of that business shall be entered in the account maintained for that business and shall be carried to, and shall form, a separate insurance fund with an appropriate name.

(2) If any part of the long term business of a licensed insurer consists of contracts under which the benefits payable to the policyholders are

determined directly by reference to the value of, or the income from, property of any description, the receipts of that part of that business shall be carried to, and shall form, a separate part of the fund maintained under subsection (1): and references in this Law to any part of the long term business of an insurer or to any part of the fund maintained under subsection (1) are references to such a part of that business or to such a part of that fund, as the case may be, as is mentioned in this subsection.

(3) A licensed insurer which carries on long term business shall maintain such accounting and other records as are necessary for identifying –

(a) the assets representing the fund maintained by the insurer under subsection (1) and each part of that fund, and

(b) the liabilities attributable to that business and to each part of that business.

Restriction on transfer of assets of insurer with long term business.

43. (1) A licensed insurer which carries on long term business shall not –

(a) transfer or otherwise apply assets representing the fund maintained by the insurer under section 42(1), otherwise than in respect of claims and expenses relating to that business, except out of any established surplus in that fund,

(b) transfer or otherwise apply assets representing any part of the fund maintained under section 42(1), otherwise than in respect of claims and expenses relating to that part of that business, except out of any established surplus in that part of that fund,

(c) transfer any surplus in any such fund or in any part of any such fund to shareholders' funds until all

established deficits have been eliminated,

(d) make any transfers from any fund maintained under section 42(1) to shareholders' funds except out of an established surplus, or

(e) where the licensed insurer is a company, declare or pay any dividend until all established deficits on any fund or any part of any fund maintained under section 42(1) have been eliminated.

(2) The provisions of subsection (1)(e) are in addition to the provisions of section 33 of the Companies (Guernsey) Law, 1994 and sections 61 and 62 of the Companies (Alderney) Law, 1994.

(3) In subsection (1) **"established surplus"** and **"established deficit"** mean any amount shown by an investigation to which section 41 applies to be an amount by which the assets representing the fund maintained by the insurer under section 42(1) or, as the case may be, representing any part of that fund, exceed or, as the case may be, are less than the liabilities of the insurer attributable to the long term business carried on by the insurer or, as the case may be, attributable to any part of that business.

NOTE

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

Transfers of long term business: sanction of Court required

Transfers of long term business.

44. (1) A scheme under which all or any of the long term business of

one body ("**the transferor**") is to be transferred to another body ("**the transferee**") shall not –

(a) if either or both of those bodies is a licensed insurer,

(b) in respect of any policy comprised in that business written under Guernsey law, or

(c) in respect of any policy comprised in that business issued to a person resident in the Bailiwick,

be carried out without the sanction of the Royal Court under this section.

(2) An insurer which contravenes any provision of subsection (1) is guilty of an offence.

Procedure with respect to applications.

45. (1) Either the transferor or the transferee may apply to the Royal Court for an order under section 44 sanctioning a scheme.

(2) The Royal Court shall not determine an application for an order under section 44 sanctioning a scheme unless –

(a) the application is accompanied by a report on the terms of the scheme by an independent actuary, and

(b) the Royal Court is satisfied that the requirements of subsection (3) have been complied with.

(3) The requirements referred to in subsection (2) are –

(a) that a notice has been published in La Gazette Officielle on at least two occasions stating –

(i) the date and time when the application is to be made,

(ii) that copies of the application and of the report referred to in subsection (2)(a) are available for inspection at all reasonable times at an address in Guernsey set out in the notice and that copies of that report are available for purchase there upon payment of a reasonable sum, and

(iii) that any person (including, without limitation, any employee of the transferor or transferee) alleging that he would be adversely affected by the carrying out of the scheme is entitled to oppose the application at that time,

(b) [except where the Commission has given consent], that a statement –

(i) setting out the terms of the scheme,

(ii) containing a summary of the report referred to in subsection (2)(a) sufficient to indicate the opinion of the actuary as to the likely effects of the scheme on the long term policyholders of the bodies concerned, and

(iii) stating that copies of that report are available for purchase at an address in Guernsey set out in the statement on payment of a reasonable sum,

has been sent to each of the long term policyholders of the bodies concerned and (where any of the bodies concerned is a company) to every member of that company,

(c) that a copy of the application, of the report referred to

in subsection (2)(a) and of any statement sent out under paragraph (b) has been served on the Commission and that a period of not less than [42 days, or such other period that the Commission may specify not less than 21 days (provided that the Commission is satisfied that it is in the interests of the relevant policy holders),] has elapsed since the date of service,

(d) that a period of not less than [42 days, or such other period that the Commission may specify not less than 21 days (provided that the Commission is satisfied that it is in the interests of the relevant policy holders),] has elapsed since the notice referred to in paragraph (a) was last published in La Gazette Officielle, and

(e) that copies of the application and of the report referred to in subsection (2)(a) have, throughout the period since the notice referred to in paragraph (a) was last published in La Gazette Officielle, been available for inspection by policyholders or their proxies at an address in Guernsey set out in that notice and that copies of that report have been available for purchase there during that period upon payment of a reasonable sum,

and in this subsection the expression **"an address in Guernsey"** means –

(A) in a case in which the transferor or transferee is an Alderney body, an address in Guernsey and in Alderney, and

(B) in a case in which the transferor or transferee is a Sark body, an address in Guernsey and in Sark.

(4) At the hearing of an application for an order under section 44 sanctioning a scheme the following persons shall be entitled to be heard –

(a) the Commission, and

(b) any person who alleges that he would be adversely affected by the carrying out of the scheme.

NOTE

In section 45, the words in square brackets in, first, paragraph (b) and, second, paragraph (c) and paragraph (d) of subsection (3) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, respectively section 14 and section 15, with effect from 12th March, 2008.

Determination of applications.

46. The Royal Court shall not make an order under section 44 sanctioning the scheme unless –

(a) the Court is satisfied that the transferee is, or will be immediately after the making of the order –

(i) licensed under this Law in respect of long term business of the class or classes to be transferred under the scheme, or

(ii) licensed to carry on insurance business of the descriptions concerned in the country outside the Bailiwick where the transferee is to undertake its obligations under the policies to be transferred to it, and

(b) except where all of the policies to be transferred are contracts of re-insurance, the Commission has certified –

(i) in a case within paragraph (a)(i), that the transferee possesses the necessary [capital resources required to be maintained in accordance with rules of the Commission under sections 38A to 38C] after taking into account the proposed transfer, or

(ii) in a case within paragraph (a)(ii), that the relevant supervisory authority in the country concerned has been notified of the proposed scheme by the Commission, and either has consented, or has not refused consent within three months of being so notified.

NOTE

In section 46, the words in square brackets in paragraph (b)(i) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 12, with effect from 1st May, 2015.

Rights of policyholders.

47. (1) This section applies where the Royal Court makes an order under section 44 sanctioning a scheme.

(2) The Court shall direct that –

(a) notice of –

(i) the making of the order and of any other order giving effect to the transfer, and

(ii) the execution of any instrument giving effect to the transfer,

shall be published by the transferor and the transferee

in La Gazette Officielle and in any other relevant jurisdiction, and

(b) the notice shall specify the period during which any policyholder may exercise any right to cancel the policy,

and the instrument or order shall not bind the policyholder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.

Supplementary provisions.

48. (1) Where the Royal Court makes an order under section 44 sanctioning a scheme the Court may, either by that order or by any subsequent order, make provision for all or any of the following matters –

(a) the transfer to the transferee of the whole or any part of the undertaking and of the property and liabilities of the transferor,

(b) the allotting or appropriation by the transferee of any shares, debentures, policies or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person,

(c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor,

(d) the dissolution, without winding up, of the transferor, and

(e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(2) Where an order under section 44 sanctioning a scheme provides for the transfer to the transferee of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the scheme to cease to have effect; and, where the liabilities transferred are liabilities under policies covered by the scheme, it is immaterial for these purposes that the law applicable to any of those policies may be the law of a place outside the Bailiwick.

(3) Where a scheme is sanctioned by an order of the Royal Court under section 44, the transferee shall, within a period of 10 days beginning on the date on which the order is made or such longer period as the Commission may allow, deposit [an office copy] of the order with the Commission.

NOTE

In section 48, the words in square brackets in subsection (3) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 16, with effect from 12th March, 2008.

Notification of significant shareholdings

Notification of acquisition of significant shareholding.

49. (1) A person who becomes a significant shareholder in relation to a licensed insurer which is a company shall, within a period of 14 days immediately following the day of that event, give notice in writing of the event to the Commission.

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

[*Notification of acquisition of voting power*

Notification of acquisition of voting power.

49A. (1) Where a person who, alone or with associates, becomes entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company, or of any other company of which that company is a subsidiary, he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(2) Where a person, alone or with associates –

(a) is already entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company or of any other company of which that company is a subsidiary, and

(b) becomes entitled to exercise, or control the exercise of a further 5% or more of that voting power,

he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(3) For the purposes of subsections (1) and (2) –

(a) a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever –

(i) becomes entitled to do so as a member of a company, or

(ii) acquires any interest which may entitle him to be a member of that company, and

(b) the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date

of receipt by the Commission of written notification of the proposed change unless, before the expiration of that period, the Commission serves notice on the licensee concerned that it does not approve the change.]

NOTE

Section 49A, and the subheading thereto, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 17, with effect from 12th March, 2008.

PART IV
WINDING UP OF LICENSED INSURERS

Preliminary

Application of this Part.

50. This Part of this Law applies to licensed insurers which are Guernsey companies or Alderney companies; and subsections (2) and (3) of section 54 apply in addition to any licensed insurer which is an unincorporated Bailiwick body.

Winding up

Deemed insolvency of insurer with general business.

51. (1) A licensed insurer which is a Guernsey company or an Alderney company and which carries on general business shall be deemed to be unable to pay its debts for the purposes of –

(a) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company), or

(b) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company),

if at any time it does not comply with [the capital resources requirements applicable

to it by virtue of rules of the Commission under sections 38A to 38C]; and the provisions of those Laws as to winding up shall, subject to the provisions of subsection (3), have effect accordingly.

(2) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with, whether by virtue of section 54 or otherwise.

(3) Notwithstanding the provisions of this section, the Royal Court or, as the case may be, the Court of Alderney may, whether to protect the interests of the public, policyholders or potential policyholders or for any other reason, and without prejudice to its powers under the Companies (Guernsey) Law, 1994 or, as the case may be, the Companies (Alderney) Law, 1994, decline to make a winding up order in respect of a company which does not comply with [the capital resources requirements applicable to it by virtue of rules of the Commission under sections 38A to 38C] if the Court is satisfied that it would not be reasonable or expedient to make such an order; and in any such case the Court may make such alternative order, subject to such conditions, as it thinks fit.

NOTES

In section 51, the words in square brackets in subsection (1) and subsection (3) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 13, with effect from 1st May, 2015.

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

Winding up of Guernsey or Alderney companies under Companies Laws.

52. (1) Subject to the provisions of subsection (2) –

(a) the Royal Court may order the winding up, in accordance with the Companies (Guernsey) Law, 1994, of a licensed insurer which is a Guernsey

company, and

(b) the Court of Alderney may order the winding up, in accordance with the Companies (Alderney) Law, 1994, of a licensed insurer which is an Alderney company,

and the provisions of those Laws shall apply accordingly subject to the modification that the insurer may be ordered to be wound up on the application of –

(i) any 10% or more of the number of its policyholders, in a case where the insurer has more than 100 policyholders,

(ii) any 10 or more of its policyholders, in any other case.

(2) An application shall not be presented to the Royal Court or, as the case may be, to the Court of Alderney except by leave of that Court, and leave shall not be granted until a prima facie case has been established to the satisfaction of that Court and until security for costs for such amount as that Court thinks reasonable has been given.

NOTE

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

Winding up on application of Commission.

53. (1) The Commission may present an application for the winding up in accordance with the Companies (Guernsey) Law, 1994 of a licensed insurer which is a Guernsey company, or in accordance with the Companies (Alderney)

Law, 1994 of a licensed insurer which is a Alderney company, on the ground –

(a) that the insurer is unable to pay its debts within the meaning of –

(i) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company), or

(ii) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company),

as those sections have effect in relation to a licensed insurer by virtue of section 51 of this Law,

(b) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Law or any Ordinance, regulation or rule under it,

(c) that –

(i) the insurer has failed to satisfy an obligation imposed by section 37 or 41(1)(b) or has contravened any condition or direction imposed under section 12 or 16, or

(ii) the Commission is unable to ascertain the financial position of the insurer, or

(d) that the Royal Court (in the case of a Guernsey company) or the Court of Alderney (in the case of an Alderney company) is of the opinion that it is just and equitable that the company should be wound up,

and section 52(2) does not apply in the case of an application presented by the Commission pursuant to this subsection.

(2) In any proceedings on an application to wind up a licensed insurer presented by the Commission under subsection (1), evidence that the insurer was insolvent –

(a) at the close of the period to which the accounts of the insurer last deposited under section 37 relate, or

(b) at any date or time specified in a requirement under any of sections [68] to 72,

shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

NOTES

In section 53, the figures in square brackets in paragraph (b) of subsection (2) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 3, with effect from 28th July, 2010.

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

Winding up, etc. of insurer with long term business.

54. (1) Notwithstanding the provisions of Part XV of the Companies (Guernsey) Law, 1994 (in the case of a licensed insurer which is a Guernsey company) or Part XVII of the Companies (Alderney) Law, 1994 (in the case of a licensed insurer which is an Alderney company), a licensed insurer which carries on long term business shall not be wound up voluntarily.

(2) Subject to the provisions of subsection (3), in any winding up or other dissolution of a licensed insurer which is –

(a) a Guernsey company or an Alderney company, or

(b) an unincorporated Bailiwick body,

and which carries on long term business –

(i) the assets representing the fund maintained by the insurer in respect of its long term business shall be available only for meeting the liabilities of the insurer attributable to that business,

(ii) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other business.

(3) Where the value of the assets mentioned in subparagraph (i) or (ii) of subsection (2) exceeds the amount of the liabilities mentioned in that subparagraph the restriction imposed by subsection (2) shall not apply to so much of those assets as represents the excess.

NOTE

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

Continuation of long term business of insurer in liquidation.

55. (1) This section shall have effect in relation to the winding up of a licensed insurer which is a Guernsey company or an Alderney company and which carries on long term business.

(2) The liquidator shall, unless the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the

case of a licensed insurer which is an Alderney company) orders otherwise, carry on the long term business of the insurer with a view to its being transferred as a going concern to another body, whether an existing body or a body formed for that purpose; and in carrying out that business the liquidator may agree to the variation of any contracts of insurance in existence when the Act of Court ordering the winding up is made, but shall not effect any new contracts of insurance.

(3) The Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the value of the contracts made by the insurer in the course of carrying on its long term business.

(4) The Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, on the application of the liquidator or the Commission, appoint an independent actuary to investigate the long term business of the company and to report to the liquidator and to the Commission on the desirability or otherwise of that business being continued and on any reduction in the value of the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(5) The provisions of section 44 shall not apply in the course of the winding up of a licensed insurer which carries on long term business and which would be "the transferor" for the purposes of that section.

Responsibility for fraudulent trading disclosed in course of winding up.

56. (1) If, in the course of the winding up of a licensed insurer which is a Guernsey company or an Alderney company, it appears that any insurance business of the insurer has been carried on –

(a) with intent to defraud creditors, shareholders, policyholders or former policyholders of the insurer or creditors of any other person, or

(b) for any fraudulent purpose,

the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company), on the application of the liquidator or any creditor, shareholder, policyholder or former policyholder of the insurer, may, if the Court thinks it proper to do so, and after giving him the opportunity to be heard, declare that any person who was knowingly party to the carrying on of that business in that manner shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the insurer as the Court may direct.

(2) Where the Royal Court or the Court of Alderney makes a declaration under subsection (1), it may make such order as it thinks proper for the purpose of giving effect to that declaration.

(3) Where the Royal Court or the Court of Alderney makes an order under subsection (2) directing that any money or property shall be repaid or restored to a licensed insurer which carries on long term business or that any sum be contributed to its assets, then, if and in so far as the wrongful act which is the reason for the making of the order related to assets representing a fund maintained by the insurer in respect of that business, the Court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Law as assets of that fund, and this Law shall have effect accordingly.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be liable to other civil action or to criminal prosecution in respect of the matters on the ground of which a declaration under subsection (1) is to be made.

(5) A person who is knowingly party to the carrying on by a licensed insurer of any insurance business with such intent or for such purpose as is mentioned in subsection (1) is guilty of an offence.

Reduction of contracts as alternative to winding up.

57. In the case of a licensed insurer which has been proved to be unable to pay its debts, the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer

which is an Alderney company) may, if it thinks it proper to do so, and having regard to the best interests of the insurer's policyholders, reduce the amount of the contracts of the insurer on such terms and subject to such conditions as the Court thinks just, in place of ordering the winding up of the insurer.

Winding up of unsuccessful applicant, etc.

58. If the Commission refuses, pursuant to the provisions of Part I of this Law, to license a Guernsey company or an Alderney company as an insurer and it appears to the Commission that –

(a) the company is unable to pay its debts within the meaning of –

(i) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company), or

(ii) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company),

as those sections have effect in relation to a licensed insurer by virtue of section 51 of this Law, or

(b) the criteria specified in Schedule 7 are not fulfilled –

(i) in relation to the company, or

(ii) in relation to any person who is a director or controller of the company,

the Commission may present an application for the winding up of the company in accordance with Part XVI of the Companies (Guernsey) Law, 1994 or, as the case may be, Part XVIII of the Companies (Alderney) Law, 1994 as if the company were a licensed insurer.

NOTE

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

PART V
SUPPLEMENTARY REGULATORY MATTERS

Insurance transactions in breach of Law

Insurance transactions in breach of Law.

59. It is hereby declared for the avoidance of doubt that no transaction in the course of the effecting or carrying out of a contract of insurance shall be void or voidable by reason only that at the time of that transaction any party thereto is in breach of any provision of or any requirement arising under this Law or any Ordinance, regulation or rule made under it.

Notice of decisions

Notice of Commissions' decision to refuse licence, etc.

60. (1) Notice of a decision of the Commission required to be served under section 7(5), 10(5), 12(10), 13(5), 14(7), 15(7) or 16(9) –

(a) shall state the grounds of the Commission's decision, and

(b) shall give particulars of the right of appeal conferred by section 63.

(2) Where –

(a) a ground for a decision mentioned in section 7(5), 10(5), 12(10), 13(5), 14(7), 15(7) or 16(9) is that any

criterion of paragraph 3 of Schedule 7 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) a condition of a licence, or a direction under section 16(1), requires the removal or replacement of any person as a director, controller, partner, manager, general representative, employee, auditor or actuary,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 63.

Representations and appeals

Representations concerning decisions of Commission.

61. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 63, [other than a decision to serve a notice under section 68(1), (2), (3) or (7) or 70(1),] the procedure prescribed in this section shall be followed.

(2) The Commission shall serve on the person concerned a notice in writing –

(a) stating that the Commission is proposing to take the decision,

(b) stating the grounds for the proposed decision,

(c) setting out particulars of any condition or direction proposed to be imposed, varied or rescinded,

(d) stating that the person concerned may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the

Commission may from time to time determine, and

(e) giving particulars of the right of appeal which would be exercisable under section 63 if the Commission were to take the proposed decision,

and **"the person concerned"** means the person by whom the right of appeal would be so exercisable.

(3) Where –

(a) a ground for the proposed decision is that any criterion of paragraph 3 of Schedule 7 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) any proposed condition or direction requires the removal or replacement of any person as a director, controller, partner, manager, employee, general representative, auditor or actuary,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to him) giving particulars of the right of appeal which would be exercisable under section 63 if the Commission were to take the proposed decision.

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

(5) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public, the clients, policyholders or potential policyholders of the person concerned or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then the procedure prescribed

in this section may be dispensed with altogether.

NOTE

In section 61, the words, figures and parentheses in square brackets in subsection (1) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 5, with effect from 24th February, 2010.

Disclosure of reasons for decisions of Commission.

62. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 63, the person upon whom the right of appeal is conferred may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the decision.

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

(a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),

(b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place, or

(c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 63.

Appeals against decisions of Commission.

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

(a) to refuse an application by him for a licence,

(b) to […] revoke his licence,

(c) to impose, vary or rescind any condition in respect of his licence,

(d) not to allow the surrender of his licence to be withdrawn, or to refuse consent to the surrender of his licence,

(e) to refuse consent under section 4(1)(b) to carry on, or hold himself out as carrying on, insurance business in or from within a country outside the Bailiwick, or to revoke any such consent, or to impose, vary or rescind any condition in respect of any such consent,

(f) to impose a licence on him pursuant to section 10(1),

(g) to give him directions under section 16, 28, 64 or 68(6) or to vary or rescind any direction so given,

(h) to refuse his application under section 19(1), or to revoke a permission granted to him under that section, or to impose, vary or rescind any condition in respect of any such permission,

(i) to serve a notice on him under section 20 objecting to a name,

[(ia) to modify, under section 30(2), any prohibition, restriction or requirement relating to capital resources imposed by or under rules of the Commission under sections 38A to 38C,

(ib) to vary or rescind any modification made by the Commission under section 30(2),

(ic) to impose, vary or rescind any condition in respect of any such modification,]

(j) to omit, pursuant to the provisions of section 62(2), any matter from a statement of reasons given to him,

(k) to serve a notice on him under section 68(1), (2), (3) or (7), 69(1) or (3) or 70(1),

[(l) under section 28A, to make or vary a prohibition order prohibiting the performance of any function, any specified function or any specified description of function,]

[(m) to refuse to vary or revoke any such order under section 28A(5), or

(n) under section 84A, to make or vary a disqualification order disqualifying a person from being an actuary of any licensed insurer or any particular class of licensed insurer,]

[(o) to refuse to vary or revoke any such order under section 84A(2), or

(p) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section,]

may appeal to the Court against the decision.

(2) Where –

(a) a ground for a decision described in subsection (1) is that any criterion of paragraph 3 of Schedule 7 is not

or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

(b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as a director, controller, partner, manager, employee, general representative, auditor or actuary,

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

(3) A person aggrieved by a decision of the Commission to serve a notice of objection on him under section 25 or 26 may appeal to the Court against the decision.

(4) The grounds of an appeal under this section shall be that[–

(a) the decision was *ultra vires* or there was some other error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure].

(5) An appeal under this section shall be instituted –

(a) within a period of 28 days immediately following the date of the notice of the Commission's decision or, as the case may be, the notice of objection, and

(b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(6) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may –

(a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

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

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

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

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

(8) On an appeal under this section against a decision described in subsection (1)(c) or (g) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition or direction in question, or the variation or rescission thereof, pending the determination of the appeal.

(9) For the purposes of determining an appeal under this section

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g O.R.C. No. VII of 1989.

against a decision described in subsection (1)(j) to omit, pursuant to the provisions of section 62(2), any matter from a statement of reasons, the Court may examine the information the disclosure of which the Commission considers would be prejudicial; and unless the Court orders otherwise the information shall not, pending the determination of the appeal, be disclosed to the appellant or any person representing him.

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

(a) where the person described in subsection (1), (2) or, as the case may be, (3) –

(i) is an Alderney company, or

(ii) is not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Alderney,

the Court of Alderney,

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

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

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

NOTES

In section 63,

the words omitted in square brackets in paragraph (b) of subsection (1) were repealed by the Insurance Business (Bailiwick of Guernsey)

(Amendment) Ordinance, 2008, section 6, Schedule, paragraph 9, with effect from 12th March, 2008;

subparagraph (ia), subparagraph (ib) and subparagraph (ic) of subsection (1) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 14, with effect from 1st May, 2015;

subparagraph (l) of subsection (1) was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 18, with effect from 12th March, 2008;

first, subparagraph (m) and, second, subparagraph (n) of subsection (1) were substituted [4] *and, third, subparagraph (o) and subparagraph (p) thereof were inserted, by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008, respectively section 4(a), section 4(b) and section 4(c), with effect from 10th December, 2008;*

the words in square brackets in subsection (4) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 19, with effect from 12th March, 2008.

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

Advertising

Restrictions as to insurance advertisements.

64. (1) A person shall not issue or cause to be issued an insurance advertisement inviting persons in the Bailiwick to enter into or to offer to enter into a contract of insurance with an insurer which is not a recognised insurer in respect of the contract in question.

(2) For the purposes of this section and of any regulations made under it –

(a) an insurance advertisement issued by any person on behalf of another person shall be treated as an insurance advertisement issued by that other person,

(b) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused to

be issued by him on every day on which he causes or permits it to be displayed or exhibited, and

(c) the issue of an advertisement containing an invitation –

(i) to enter into or offer to enter into a contract of insurance with, or

(ii) to become a client of or use services provided by,

a person specified in the advertisement shall, unless the contrary is proved, be presumed to have been caused by that person.

(3) Without prejudice to the provisions of subsection (1), the Commission may make regulations in respect of the issue, form and content of insurance advertisements.

(4) Regulations under this section may, without prejudice to the generality of subsection (3) –

(a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise),

(b) make provision as to the matters which must or which may not be included in insurance advertisements,

(c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission,

(d) make different provision in relation to different

descriptions of insurance business.

(5) If the Commission considers that –

(a) any insurance advertisement issued or proposed to be issued is misleading, or

(b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of this section or any regulation under it,

the Commission may, subject to the provisions of section 61, give the advertiser a direction under this section.

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

(a) a prohibition on the issue of any advertisements or any advertisements of a specified description,

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

(c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified description,

(d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner.

(7) A direction under this section –

(a) may have immediate effect,

(b) shall give particulars of the right of appeal conferred by section 63, and

(c) if given orally, shall be confirmed by the Commission in writing not later than the next working day.

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

(9) Subject to subsection (10), a person who –

(a) contravenes any provision of subsection (1),

(b) issues or causes to be issued an advertisement in contravention of regulations under this section or who otherwise contravenes any provision of such regulations, or

(c) issues or causes to be issued an advertisement in contravention of a direction under this section or who otherwise contravenes any provision of such a direction,

is guilty of an offence.

(10) A person whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under subsection (9) if he proves that –

(a) he received the advertisement for publication in the ordinary course of his business,

(b) the matters contained in the advertisement were not

(wholly or in part) devised or selected by him or by any person under his direction or control, and

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

Non-recognised and unlicensed insurers

Information in invitations relative to unlicensed insurers.

65. (1) This section applies to any case, other than a case specified in paragraph 2 of Schedule 4, in which a person, in the course of carrying on any business or profession, invites a person in the Bailiwick to take any step with a view to entering into or offering to enter into a contract of insurance with an insurer which is neither licensed nor exempted from licensing under Part I in respect of the contract in question.

(2) In any case to which this section applies the person who issues the invitation shall provide any person to whom the invitation is issued, in the manner specified in paragraph 1 of Schedule 4, with information indicating that the insurer to which the invitation relates is neither licensed nor exempted from licensing under Part I in respect of the contract in question; and a person who fails to comply with the provisions of this subsection is guilty of an offence.

(3) The Commission may by regulation amend any of the provisions of Schedule 4.

Information as to services for unlicensed insurers.

66. (1) A person who provides any insurance managerial, insurance advisory or insurance consultancy services, or any administrative or secretarial services, for an insurer who is neither licensed nor exempted from licensing under Part I shall –

(a) as soon as practicable after commencing to provide those services, inform the Commission in writing of the name of the insurer and of the nature of those

services,

(b) inform the Commission in writing, as soon as practicable, of any change in the nature of those services,

(c) furnish the Commission, as soon as practicable, with such further details as the Commission may from time to time reasonably require as to the insurer and the services provided.

(2) A person who, without lawful authority or excuse, contravenes any provision of, or any requirement arising under, subsection (1) is guilty of an offence.

(3) Subsection (1) does not apply –

(a) in relation to the provision of actuarial services by an actuary or accountancy services by an accountant, or

(b) if the person providing the services has already furnished the information in question to the Commission, whether pursuant to the requirements of some other enactment or otherwise.

Power of Commission to obtain information

Site visits.

67. …

NOTE

Section 67 was repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 4, with effect from 28th July, 2010.

Power to request and obtain information and documents.

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

(a) at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions,

(b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on or on any aspect of any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may, by notice in writing served on a licensee –

(a) require him to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,

(b) require him to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

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

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from

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

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

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

(i) that person, or

(ii) any other person who is a present or past director, controller, partner, manager, employee or general representative of that licensee,

to provide an explanation of them, and

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

(5) If it appears to the Commission to be desirable to do so in the interests of the public or the clients, policyholders or potential policyholders of a licensee, or for the protection or enhancement of the reputation of the Bailiwick as a finance centre, the Commission may also exercise the powers conferred by this section in relation to any person who is or has at any relevant time been an associated party of the licensee.

(6) The foregoing provisions of this section shall apply in relation to a former licensee as they apply in relation to a licensee, but only, unless the Commission directs otherwise in any particular case, for a period of six years immediately after the date on which the former licensee ceased to be a licensee.

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

(8) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to, where the licensee is a company, any person who is a significant shareholder of the licensee if the Commission considers that it is desirable to do so for the protection of the interests of the public or the policyholders, potential policyholders or clients of the licensee or the reputation of the Bailiwick as a finance centre.

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

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

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

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

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

(ii) in proceedings for –

(A) an offence under subsection (9) or section 87(1),

(B) some other offence where, in giving

evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

(11) A notice under subsection (1), (2), (3) or (7) shall give particulars of the right of appeal conferred by section 63.

NOTE

In section 68, subsection (10) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Investigations by inspectors.

69. (1) The Commission may, in relation to any [relevant person], if it considers it desirable to do so in the interests of –

(a) the public or the [relevant person]'s clients, policyholders or potential policyholders, or

(b) the reputation of the Bailiwick as a finance centre,

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

(i) the nature, conduct or state of the [relevant person]'s business or any particular aspect of that business, or

(ii) the ownership or control of the [relevant person],

and the Commission shall give notice in writing of the appointment to the [relevant person] concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any person who is or has at any relevant time been an associated party of the [relevant person] under investigation.

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

(4) A [relevant person] or party being investigated under subsection (1) or (2) and any person who is or has been a director, controller, partner, manager, employee, general representative, agent, banker, auditor, actuary, advocate or other legal adviser of a [relevant person] or party being so investigated, or who has been appointed to make a report in respect of such a [relevant person] or party under section 6(5), 36 or 68(1)(b), or who is or has been a significant shareholder in relation to such a [relevant person] or party –

(a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that [relevant person] or party; and the inspector may take copies of or extracts from any documents produced to him under this paragraph,

(b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that [relevant person] or party, and

(c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

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

(6) A person who without reasonable excuse –

(a) contravenes any provision of subsection (4), or

(b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred by this section,

is guilty of an offence.

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

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

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

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

(ii) in proceedings for –

(A) an offence under subsection (6) or section 87(1),

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

only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

(8) Subject to the provisions of subsection (9), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the [relevant person] (the business, ownership or control of which is being investigated under subsection (1)); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that [relevant person] as a civil debt.

(9) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a [relevant person] as a civil debt where the court is satisfied that –

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

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

(10) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 63.

[(11) The provisions of this section shall apply in relation to a person who was a relevant person as they apply in relation to an existing relevant person, but only in connection with the business, ownership or control of that person –

(a) at a time when he was a relevant person;

(b) in the case of a person who was at any time a

registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, at any such time; and

(c) in the case of a person who was at any time carrying on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986, at any such time.]

[(12) For the purposes of this section –

(a) a **"relevant person"** means –

(i) a licensee;

(ii) a person who appears to the Commission to be conducting unlicensed business; and

(iii) a person providing services to a licensee; and

(b) **"person providing services to a licensee"** means a person who performs any function on behalf of a licensee in relation to an insurance business.]

NOTES

In section 69,

the words "relevant person" in square brackets, wherever occurring, were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 20, with effect from 12th March, 2008;

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

subsection (11) was substituted, and subsection (12) was inserted, by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, respectively section 21 and section 22, with effect from 12th March,

2008.

Investigation of suspected offences.

70. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1, 3, 4, 12 or 18, the Commission may by notice in writing require that person or any other person –

(a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence,

(b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his authority –

(a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1),

(b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice under subsection (1) or obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred

by subsection (2) is guilty of an offence.

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

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

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

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

(ii) in proceedings for –

(A) an offence under subsection (3) or section 87(1),

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

(C) perjury, or

(D) perverting the course of justice.]

(5) A notice under subsection (1) shall give particulars of the right of appeal conferred by section 63.

NOTE

In section 70, subsection (4) was substituted by the Statements Obtained

Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Power of Bailiff to grant warrant.

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

(a) that a notice has been served under section 68 on any person and that there are reasonable grounds for suspecting –

(i) that there has been a failure to comply with any requirement imposed by or under the notice,

(ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 68, or

(iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii),

(b) that it is not practicable to serve a notice under section 68, or

(c) that there are reasonable grounds for suspecting that if such a notice were served –

(i) it would not be complied with,

(ii) any documents to which it would relate would be removed, tampered with or destroyed, or

(iii) the service of the notice might seriously prejudice the performance by the Commission

of its functions,

he may grant a warrant conferring the powers set out in section 72.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 69 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

(a) that an offence under this Law has been committed in relation to the investigation,

(b) the accuracy or completeness of any information or documents furnished in the course of the investigation, or

(c) that, if a warrant were not granted –

(i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed, or

(ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 72.

(3) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 1, 3, 4, 12 or 18 and that –

(a) a person has failed to comply with any requirement of a notice under section 70(1) or any other requirement imposed by or under section 70,

(b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice or

requirement,

(c) it is not practicable to serve a notice under section 70(1), or

(d) there are reasonable grounds for suspecting that if such a notice were served –

(i) it would not be complied with,

(ii) any documents to which it would relate would be removed, tampered with or destroyed, or

(iii) the service of the notice might seriously prejudice the investigation of the suspected offences,

he may grant a warrant conferring the powers set out in section 72.

(4) In this section the expression **"Bailiff"** means –

(a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,

(b) where the warrant is to be executed in Sark, the Seneschal or his deputy,

(c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué.

Powers conferred by Bailiff's warrant.

72. (1) A warrant granted under section 71(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

(a) to enter any premises specified in the warrant, being premises –

(i) which are occupied by the person upon whom the notice under section 68 was or could be served,

(ii) upon which the documents to which the notice under section 68 relates are reasonably believed to be, or

(iii) where no notice under section 68 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents –

(i) which were required by the notice under section 68, or

(ii) where no notice under section 68 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 68,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer any questions which could have been put to him under section 68,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(2) A warrant granted under section 71(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

(a) to enter any premises specified in the warrant, being premises –

(i) which are occupied by the licensee or other person being investigated by inspectors under section 69, or

(ii) upon which any documents to which the investigation under section 69 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 69, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer any questions relevant to the investigation under section 69,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(3) A warrant granted under section 71(3) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

(a) to enter any premises specified in the warrant, being premises –

(i) which are occupied by the person upon whom the notice under section 70(1) was served,

(ii) upon which there are reasonably believed to be the documents to which the notice under section 70(1) relates, or

(iii) where no notice under section 70(1) has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer questions relevant for determining whether he or any other person has committed an offence under section 1, 3, 4, 12 or 18,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(4) A warrant granted under section 71 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(5) Any documents of which possession is taken under the powers conferred by a warrant granted under section 71 may be retained –

(a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

(b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(6) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 71 is guilty of an offence.

[(7) A statement made by a person in response to a requirement imposed under a warrant granted under section 71 –

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

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

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

(ii) in proceedings for –

(A) an offence under subsection (6) or section 87(1),

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

(C) perjury, or

(D) perverting the course of justice.]

NOTE

In section 72, subsection (7) was substituted by the Statements Obtained

Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Legal professional privilege, liens and duties of confidentiality.

73. (1) Nothing in –

(a) section […] 68, 69 or 70, or

(b) a warrant granted under section 71,

shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(2) Where a person claims a lien on a document, its production under –

(a) section […] 68, 69 or 70, or

(b) a warrant granted under section 71,

is without prejudice to his lien.

(3) A requirement imposed by or under –

(a) section […] 68, 69 or 70, or

(b) a warrant granted under section 71,

shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

NOTE

In section 73, the figures and punctuation omitted in square brackets were repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 5, with effect from 28th July, 2010.

Falsification, etc, of documents during investigation.

74. A person –

(a) …

(b) upon whom a notice under section 68, 69 or 70 has been served or who knows or has reasonable grounds to suspect –

(i) that such a notice is likely to be served on him, or

(ii) that an inquiry or investigation is being or is likely to be carried out under section 68, 69 or 70,

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

(A) …

(B) are or would be specified in such a notice, or

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

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from the persons carrying out [such an inquiry or investigation].

NOTE

In section 74, paragraph (a) and item (A) were repealed and the words in square brackets were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, respectively section 6(a), section 6(b) and section 6(c), with effect from 28th July, 2010.

Various enforcement powers of Commission

Repayment of monies from unlawful business.

75. (1) If on the application of the Commission it appears to the Court that a person has carried on business in contravention of this Law, the Court may –

(a) order him and any other person who appears to the Court to have been knowingly concerned in the contravention, forthwith or at such time as the Court may direct, to repay monies accepted from, or paid over (whether to him or to any other person) by, policyholders, clients or other persons in the course of his so carrying on that business, or

(b) appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover those monies.

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

(3) In deciding whether and on what terms to make an order under this section the Court shall have regard to the effect that payment or

repayment pursuant to the order would have on the solvency of the person concerned and on his ability to carry on his business in a manner satisfactory to his creditors.

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

(a) persons appearing to the Court to have been the policyholders or clients in respect of whom the business as a result of which the monies or profits accrued was carried on, or

(b) such other persons as the Court thinks just.

(5) On an application under this section the Court may require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what monies or profits have accrued to him as mentioned in subsection (1) or (2) and for determining how any amounts are to be distributed under this section; and the Court may require any such accounts or information to be verified in such manner as it may direct.

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

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

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

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

(a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney,

(b) where the order was made by the Court of the Seneschal, the Prévôt,

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

NOTE

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

Injunctions to restrain unlawful business, etc.

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

(a) there is a reasonable likelihood that a person will contravene –

(i) section 1, 3, 4, 12, 18 or 22,

(ii) a direction under section 16, 28 or 64, or

(iii) a regulation under section 64, or

(b) a person may have contravened a section, direction or regulation mentioned in paragraph (a) and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied

that a person may have contravened a section, direction or regulation mentioned in subsection (1)(a), the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

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

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

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

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

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987[h]; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

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h Ordres en Conseil Vol. XXX, p. 145.

General provisions as to receivers.

77. (1) Where the Court has appointed a receiver under section 75 or 76, the Court may, on the application of the receiver or of any other person appearing to the Court to have a sufficient interest in the matter, direct any person holding or having possession or control of any monies, profits or assets in respect of which the receiver was appointed to give possession of them to the receiver or otherwise to deal with them, or not to deal with them, in any manner specified by the Court.

(2) Where a receiver appointed under section 75 or 76 takes any action –

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

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

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

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

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

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

Provision as to codes of practice, etc.

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

(a) the [Policy Council], the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark, and

(b) such other persons as appear to the Commission to be appropriate including, without limitation, persons representative of that part of the Bailiwick's financial services industry which carries on business regulated by this Law,

may (without prejudice to any other power conferred by this Law as to the making of codes) issue such codes of practice as the Commission thinks necessary –

(i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to policyholder protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by persons carrying on business regulated by this Law,

(ii) generally for the purposes of this Law.

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

(3) The Commission may, after consultation as mentioned in subsection (1) in the case of a code issued under that subsection, revise the whole or

any part of a code issued under this Law and issue that revised code.

(4) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision of a code issued under this Law shall not of itself render him liable to any criminal proceedings; but –

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

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

(ii) the regulatory Laws,

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

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

NOTES

In section 78,

the word in the first pair of square brackets in paragraph (a) of subsection (1) was substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the words "Policy and Performance Committee" in square brackets in paragraph (a) of subsection (1) were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015.[5]

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.[6]

Disclosure of information

Restrictions on disclosure of information.

79. (1) Subject to the provisions of section 80 –

(a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person,

(b) no person who obtains any such information directly or indirectly from a person who has so received it,

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

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

Cases where disclosure is permitted.

80. Section 79 does not preclude –

(a) the disclosure of –

(i) information which at the time of disclosure is or has already been made available to the public from other sources, or

(ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,

(b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law,

(c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions conferred by or under this Law or would otherwise be in the interest of the public,

(d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation (actuarial or otherwise) or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,

(e) the disclosure by the Commission of information in the interests of clients or policyholders or in the public interest,

(f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions,

(g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any Ordinance, regulation or rule made under it,

(h) the disclosure of information –

(i) for the purposes of the investigation, prevention or detection of crime, or

(ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under this Law or otherwise,

(i) the disclosure of information in connection with any other proceedings arising out of this Law,

(j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or actuary of a licensee or former licensee or by a person nominated or approved for the purposes of section 6(5) or 68(1)(b) or appointed under section 69,

(k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under sections [68] to 72 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable,

(l) where information is disclosed to an officer of police

under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,

(m) the disclosure of information to a person or body responsible for a scheme for compensating clients or policyholders (whether in the Bailiwick or elsewhere) –

(i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge its functions, and

(ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission, or

(n) the disclosure of information by the Commission for the purposes or in the circumstances [described in paragraph (a), (b), (d) or (f) of section 21(2)] of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987[i].

NOTES

In section 80,

the figures in square brackets in paragraph (k) were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 7, with effect from 28th July, 2010;

the words, figures, letters and parentheses in square brackets in

[i] Ordres en Conseil Vol. XXX, p. 243; section 21(2) was amended by Order in Council No. II of 1997 and by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002.

paragraph (n) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 6, with effect from 24th February, 2010.

[**Information supplied to Commission by relevant overseas authority.**

81. (1) This section applies, to the exclusion of section 79, to information relating to the business or other affairs of any person provided to the Commission for the purposes of its functions conferred by or under this Law by a relevant supervisory authority in a country outside the Bailiwick.

(2) Information described in subsection (1) –

(a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,

(b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and

(c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

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

(a) the name of any person to whom it proposes to disclose the information, and

(b) an accurate description of that person's functions.

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise)

subject to which the consent of the relevant supervisory authority was given.

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

(a) for the purposes or in the circumstances described in section 80(h), or

(b) in accordance with the provisions of –

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

(ii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(iii) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(iv) the Disclosure (Bailiwick of Guernsey) Law, 2007, or

(v) any other enactment or subordinate legislation prescribed for the purposes of this section by regulations of the Commission,

in circumstances where that Law, enactment or subordinate legislation provides that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who –

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

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

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

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

NOTE

Section 81 was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 7, with effect from 24th February, 2010.

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

81A. The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business or other affairs of any person held, received or obtained by it under or for the purposes of this Law (whether pursuant to the provisions of this Law, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or otherwise) –

(a) take into account –

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

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

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

(b) where the information has been supplied to the Commission by a relevant supervisory authority in a country outside the Bailiwick –

(i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and

(ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it.]

NOTE

Section 81A was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 8, with effect from 24th February, 2010.

Communications to Commission by auditors, etc.

82. (1) In relation to an auditor or actuary of a licensee, this section applies to any matter of which he becomes aware in his capacity as auditor or actuary and which relates to the business or affairs of –

(a) the licensee, or

(b) any associated party thereof.

(2) In relation to a person appointed to make a report under section 6(5), 36 or 68(1)(b), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which –

(a) relates to the business or affairs of –

(i) the person in relation to which his report is made, or

(ii) any associated party thereof, or

(b) if his report relates to a person who is an associated party of another person, relates to the business or affairs of that other person.

(3) It is the duty of –

(a) an auditor or actuary of a licensee, or

(b) a person appointed to make a report under section 6(5), 36 or 68(1)(b),

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

(i) whether a person is a fit and proper person to carry on insurance business, or

(ii) whether the Commission should exercise its powers under this Law in order to protect policyholders from a significant risk of loss,

and no other duty to which the auditor, actuary or other person is subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(4) If it appears to the Commission that an auditor, actuary or person appointed to make a report under section 6(5), 36 or 68(1)(b) has failed to

comply with a duty imposed on him by subsection (3), the Commission may report him to any authority, institution or professional body to whose rules or requirements he is subject, and may disclose any information with a view to the institution of disciplinary proceedings by such authority, institution or professional body, or otherwise for the purposes of such proceedings.

(5) This section applies in relation to the auditor or actuary of a former licensee as it applies in relation to the auditor or actuary of a licensee.

Meetings of Commission with auditors, actuaries, etc.

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

(a) with a view to the performance of its functions under this Law and the regulatory Laws, or

(b) if it consider it desirable to do so for the protection of the interests of the public or the policyholders, potential policyholders or clients of a licensed insurer or the reputation of the Bailiwick as a finance centre,

request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with a licensee's auditors, actuaries or general representatives, at which the Commission may discuss any aspect of the operation, regulation or licensing of the licensee.

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

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

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

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

(3) Where a licensee fails to co-operate with the Commission or any person acting for and on behalf of the Commission when exercising or attempting to exercise their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in whatever form reasonably required, to the auditors, actuaries or general representatives in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Commission in deciding whether and in what manner to exercise its other functions conferred by or under this Law or the regulatory Laws.

(4) A licensee will be informed of any meeting arranged pursuant to this section and may attend any such meeting.

(5) The provisions of this section are in addition to the other provisions of or under this Law.

Policyholder protection

Power to establish compensation schemes.

84. (1) The States may by Ordinance establish any scheme considered by them to be desirable or expedient for the protection and compensation of clients and policyholders in cases where licensees or former licensees are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their business, being business regulated by this Law.

(2) Without prejudice to the generality of the foregoing, an Ordinance under subsection (1) may make provision in respect of all or any of the following matters –

(a) the establishment of a fund for the protection and compensation of clients and policyholders,

(b) the holding, management and application of the said fund,

(c) the making of contributions to the fund and the levying thereof from licensees and former licensees,

(d) the costs, expenses and other items which are to be chargeable to the fund,

(e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made,

(f) the description and amount of the liabilities, and the description of the creditors, to be protected,

(g) the liability of licensees and former licensees in respect of compensation payments,

(h) the payment or repayment of claims, contributions or other monies, or any description thereof,

(i) the tax treatment of contributions and repayments thereof,

(j) the crediting of monies and income to the fund,

(k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance,

(l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body, and

(m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights.

[*Disqualification orders against actuaries*

Disqualification orders against actuaries.

84A. (1) If it appears to the Commission that a person who is or has been an actuary of a licensed insurer carrying on long term business –

(a) has failed to comply with any duty imposed on him by or under the regulatory Laws, or

(b) is for any other reason unfit to be an actuary of a licensed insurer carrying on long term business (whether by reason of lacking the necessary skills or resources to carry out effectively his responsibilities as actuary or otherwise),

or if for any other reason it is in the interests of the public or any class thereof to do so, the Commission may, subject to the following provisions of this section, make an order (a **"disqualification order"**) disqualifying him from being the actuary of a licensed insurer carrying on long term business.

(2) The Commission may, on the application of the person named in a disqualification order or of its own motion, vary or revoke a disqualification order.

(3) An individual who performs or agrees to perform any function in breach of a disqualification order is guilty of an offence.

(4) A licensed insurer shall take all reasonable care to ensure that none of his functions, in relation to carrying out long term business, is performed by a person who has been disqualified from performing that function by a disqualification order.]

NOTE

Section 84A, and the heading thereto, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008, section 3, with effect from 10th December, 2008.

[**List of disqualification orders.**

84B. (1) The Commission shall maintain a list of all persons to whom a disqualification order applies.

(2) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(3) The Commission may publish –

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

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

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

NOTE

Section 84B was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008, section 3, with effect from 10th December, 2008.

[**Right to make representations as to disqualification orders.**

84C. (1) If the Commission proposes to make or vary a disqualification order against any person, it shall serve on him a notice in writing –

(a) stating that the Commission is proposing to make or vary a disqualification order against him,

(b) stating the terms of, and the grounds for, the proposed disqualification order or the variation thereof,

(c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed disqualification order or variation thereof in such manner as the Commission may from time to time determine, and

(d) giving particulars of the right of appeal which would be exercisable under this section if the Commission were to make or vary the disqualification order.

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

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

(4) Where the Commission decides to make or vary a disqualification order against any person it shall serve on him notice in writing of the decision –

(a) stating the terms of, and the grounds for, the disqualification order or the variation thereof, and

(b) giving particulars of the right of appeal conferred by section 63.]

NOTE

Section 84C was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008, section 3, with effect from 10th December, 2008.

PART VI
GENERAL PROVISIONS

Ordinances and regulations

Ordinances, regulations, rules and codes.

85. (1) The States may by Ordinance –

(a) make provision for the purpose of carrying this Law into effect and for prescribing any matter which may be prescribed under this Law by Ordinance of the States, and

(b) without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules, amend any provision of this Law.

(2) The States may by Ordinance empower the Commission or the [Policy Council] to prescribe by regulation anything which may be prescribed under this Law by Ordinance of the States.

(3) Any Ordinance, regulation, rule or code under this Law –

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

(b) may contain such consequential, incidental, supplementary and transitional provision as may

appear to be necessary or expedient, including (without limitation), in the case of an Ordinance, regulation or rule –

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance, regulation or rule,

(ii) provision amending or modifying any provision of this Law.

(4) Any power conferred by this Law to make any Ordinance, regulation, rule or code may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(5) The [Policy Council] (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under this

Law (other than an Ordinance under section 104), consult the [Policy and Performance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(6) The requirement imposed by subsection (5) to consult the [Policy and Performance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

(7) Rules and codes under this Law shall be made by an instrument in writing and shall be available to the public in such manner and on such terms as to payment or otherwise as the Commission considers appropriate; and notice of their having been made shall be published in La Gazette Officielle.

NOTES

In section 85,

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

the words "Policy and Performance Committee" in square brackets, wherever occurring, were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015.[7]

The following Ordinances have been made under section 85:

Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008;
Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008;
Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010;
Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010;
Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011;
Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014.

The following Regulations have been made under section 85:

Financial Services Commission (Fees) Regulations, 2014;
Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2014.

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.[8]

Regulations: consultation with Committees and laying before States.

86. Regulations made under this Law or under an Ordinance made under this Law –

(a) where made by the Commission, shall be made after consultation with the [Policy Council], the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark,

(b) where made by the [Policy Council], shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark,

(c) whether made by the Commission or by the [Policy Council], shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

NOTES

In section 86,

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

the words "Policy and Performance Committee" in square brackets, wherever occurring, were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015.[9]

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.[10]

Criminal proceedings

Offences as to false or misleading information, etc.

87. (1) If a person –

(a) in connection with an application for, or for the purposes of obtaining, a licence under this Law,

(b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, any provision of this Law or of any Ordinance, regulation or rule made under it,

(c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Law, or

(d) in purported compliance with a requirement of an

auditor appointed under section 34 or a person appointed to make a report under section 6(5)(a), 36 or 68(1)(b),

does any of the following –

(i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) A licensee, or any director, controller, partner, manager, employee or general representative of a licensee, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe –

(a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation

to the licensee, and

(b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the licensee,

is guilty of an offence.

(3) A person who –

(a) by any statement, promise or forecast which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) by any dishonest concealment of material facts, or

(c) by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is false, deceptive or misleading in a material particular,

induces or attempts to induce another person to enter into or to offer to enter into any contract of insurance with an insurer is guilty of an offence.

Penalties.

88. (1) A person or body guilty of an offence under section 12(5), 16(5), 22(2), 24(3)(a), 27, 34(5) or (6), 35(8), 37(5), 40(5) or (6), 49(2), 64(9)(a) or (b) or 87(2) shall be liable –

(a) on conviction on indictment, to a fine,

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

(2) A person or body guilty of an offence under any other provision of this Law shall be liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,

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

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

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

NOTES

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

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

Criminal proceedings against unincorporated bodies.

89. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of

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

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

that body and not in the name of any of its members and, for the purpose of such proceedings, the service of any document (including any summons) on that body shall be carried out in accordance with the provisions of section 95.

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

(3) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) any director thereof or any other officer thereof who is bound to fulfil any duty whereof the offence is a breach,

(b) any partner thereof (in the case of a partnership), or

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

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

Criminal liability of directors, etc.

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

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

as if he were a director.

Defence of due diligence.

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

Jurisdiction.

92. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under this Law, or any Ordinance, regulation or rule made under it, may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

Liability of States

Exclusion of liability.

93. No liability shall be incurred –

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

(b) by the Commission or Her Majesty's Greffier, or

(c) by any member, officer or servant of any of the aforesaid,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under this Law, or any Ordinance, regulation or rule made under it, unless the thing is done or omitted to be done in bad faith.

Miscellaneous

Fees.

94. (1) [The States of Guernsey Policy Council] may by regulation

prescribe fees to be payable to the Commission in connection with such of the matters specified in subsection (2) as may be prescribed by the regulations; and regulations under this section may provide for the payment of interest or penalties in the event of default in the due payment of fees.

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

(a) applications for, and the grant of, licences,

(b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification as required by or under section 1(5), 34, 37(1), 40 or 68,

(c) the making of a request to the Commission –

(i) to recognise an organisation or society as an organisation representative of employers or employees for the purposes of section 5(b),

(ii) under section 19(1) for permission for the purposes of section 18, 23 or 24,

(iii) to approve a person under section 29(1)(a)(ii) to act as an insurer's general representative,

(iv) to modify any requirement of section 30 or 32,

(v) to approve any accounts or any actuarial report in abridged form for the purposes of section 39(2) or 41(1)(d),

(vi) to allow the surrender of a licence to be withdrawn,

(vii) to consent to the surrender of a licence,

(d) an application for the consent of the Commission –

(i) under section 4, to the carrying on of insurance business in a country outside the Bailiwick,

(ii) under section 45, to a scheme for the transfer of long term business,

[(iii) under or for the purposes of rules of the Commission under sections 38A to 38C, being an application relating to the capital resources requirements applicable by virtue of those rules (whether as enacted or as modified by the Commission under section 30(2)) including, without limitation, the calculation, maintenance and approval thereof,]

(iv) …

(v) …

(e) such other matters as the States may by Ordinance prescribe for the purposes of this section.

(3) Regulations under this section may also prescribe fees to be payable to the Commission annually or periodically, specifying the dates, times, intervals or occasions at which or on which payment is to be made.

(4) Fees payable pursuant to regulations under this section –

(a) shall be recoverable from –

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

(ii) the licensed insurer in respect of whose licence the fee is payable, or

(iii) the person or body specified by the regulations,

as a civil debt due to the Commission,

(b) are not refundable,

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

NOTES

In section 94,

the words "The States of Guernsey Policy Council" in square brackets in subsection (1) were substituted by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 2(a), with effect from 1st May, 2015;

paragraph (d)(iii) of subsection (2) was substituted, and paragraphs (d)(iv) and (d)(v) thereof were repealed, by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 15, with effect from 1st May, 2015.

The following Regulations have been made under section 94:

Financial Services Commission (Fees) Regulations, 2014;
Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2014.

The functions of the Guernsey Financial Services Commission under this section relating to the enactment of regulations or orders which prescribe or specify fees or charges payable to the Guernsey Financial Services Commission and ancillary matters were transferred to and vested in the States of Guernsey Policy Council by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 1(a), with effect from 1st May, 2015, subject to, first, the savings and transitional provisions in section 3 and, second, the provisions of section 6 of the 2015 Ordinance.

Service of notices and documents.

95. (1) Any document other than a summons to be given or served under this Law or any Ordinance, regulation or rule made under it may be given to

or served upon –

(a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,

(b) a company with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,

(c) a company without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick,

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

(e) the [Policy Council], by being left at, or sent by post or transmitted to, its principal office in the Bailiwick,

(f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick,

(g) a licensed insurer, by being given to or served on it, or by being given to or served on its general

representative, in accordance with the preceding paragraphs of this subsection,

and in this section –

(i) the expression **"by post"** means by registered post, recorded delivery service or ordinary letter post,

(ii) the expression **"transmitted"** means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication; in which event the document shall be regarded as served when it is received, and

(iii) the expression **"summons"** includes any document compelling a person's attendance before the court.

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

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the [Policy Council] or the Commission or its Chairman under

this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian; and if there is no guardian, the Commission (or, with leave of the Court, any other person) may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law; and in this subsection **"the Court"** means –

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

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

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

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

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

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended[l].

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

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[l] Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

NOTES

In section 95, the words "Policy Council" in square brackets, wherever occurring, were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.

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

Verification of information.

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

Evidence.

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

(a) that a particular person or body is or is not a licensee or former licensee or was or was not a licensee at a

particular time,

(b) the date on which a particular person obtained or ceased to hold a licence,

(c) the terms of any conditions imposed in respect of a particular person's licence,

shall be admissible in evidence.

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

General interpretation.

98. (1) In this Law any expression in respect of which there is an entry in Schedule 5 shall have, except where the context requires otherwise, the meaning given by that entry.

(2) Unless the context otherwise requires, references in this Law to the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by or under this Law on the said Policy and Finance Committee or (as the case may be) the said [Policy and Performance Committee].

(3) Except where the context otherwise requires, any reference in this Law to an enactment includes a reference thereto as [from time to time] amended, re-enacted (with or without modification), extended or applied.

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

(5) The Interpretation (Guernsey) Law, 1948[m] shall apply to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 98,

the words "Policy and Performance Committee" in square brackets, wherever occurring, were substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015;[11]

the words in square brackets in subsection (3) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011, section 4, with effect from 30th November, 2011.

The functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance.[12]

Effect on other Laws relating to insurers.

99. The provisions of this Law are in addition to and, except where the context otherwise requires, not in derogation from any other requirement to which an insurer may be subject including, without limitation, any provision of or under –

(a) the Companies (Guernsey) Law, 1994 and the Companies (Enabling Provisions) (Guernsey) Law, 1996[n],

(b) the Companies (Alderney) Law, 1994,

(c) the Road Traffic (Compulsory Third-Party Insurance)

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[m] Ordres en Conseil Vol. XIII, p. 355.

[n] Order in Council No. XII of 1996.

(Guernsey) Laws, 1936 to 1983[o],

(d) the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950[p],

(e) the Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969[q],

(f) the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972[r],

(g) the regulatory Laws,

(h) the Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996[s],

(i) the Steam Boilers (Insurance) Ordinance, 1952[t],

(j) any other enactment in force in the Bailiwick or any part thereof requiring there to be in force any policy of insurance.

NOTE

The Companies (Guernsey) Law, 1994 and the Companies (Enabling Provisions) (Guernsey) Law, 1996 have since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, respectively

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o Ordres en Conseil Vol. X, p. 388; Vol. XV, p. 43; Vol. XVIII, pp. 35 and 257; Vol. XX, p. 247; Vol. XXIII, p. 227; Vol. XXIV p. 250; Vol. XXVII, p. 76; Vol. XXVIII, p. 303.

p Ordres en Conseil Vol. XIV p. 209; Vol. XVIII, p. 81; Vol. XXIII, p. 364.

q Ordres en Conseil Vol. XXII, pp. 2 and 53; Vol. XXIV, p. 250.

r Ordres en Conseil Vol. XXIII, p. 515.

s Order in Council No. XIII of 1996.

t Recueil d'Ordonnances Tome X, p. 311.

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

Repeals and amendments.

100. (1) The enactments mentioned in the first column of Part I of Schedule 6 are repealed to the extent specified in the second column of that Schedule.

(2) The enactments mentioned in the first column of Part II of Schedule 6 shall have effect subject to the amendments specified in the second column of that Schedule.

Provision as to publication of notices in Alderney and Sark and on Commission's website.

101. (1) If, pursuant to any requirement imposed by or under this Law, any document or information is published in La Gazette Officielle –

(a) a copy of the document or information shall be published in the Alderney Official Gazette, and

(b) a copy of the document or information shall be sent or delivered to the Seneschal of Sark who shall forthwith cause a copy of the document or information to be inserted in the Sark notice box.

(2) Any requirement imposed on the Commission by or under this Law to publish any document or information in La Gazette Officielle shall be construed as including a requirement to publish that document or information on the Commission's official web site.

Savings provisions.

102. (1) Any subordinate legislation made or other thing done under an enactment repealed and re-enacted (with or without modification) by this Law, or

having effect as if so made or done, which could have been made or done under this Law shall have effect, after the date of commencement of this Law, as if made or done under the provision re-enacted.

(2) Any reference in any enactment, statutory instrument or rule of court (however expressed) to –

(a) a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, or

(b) registered or registration (or any related expression) under and within the meaning of that Law,

shall be construed after the date of commencement of this Law as a reference to (as the case may require) –

(i) a licensed insurer, or

(ii) licensed or licence (or the equivalent related expression),

within the meaning of this Law.

(3) A person who immediately before the commencement of this Law was a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986 shall on the commencement of this Law be deemed to be a licensed insurer under and within the meaning of this Law, the provisions of which shall apply accordingly; and any conditions subject to which he was registered under the said Law of 1986 shall apply in respect of the licence under this Law which he is deemed to hold by virtue of this subsection.

(4) An insurer who at any time before the commencement of this Law carried on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986 but who may not carry on insurance business in such circumstances as not to require licensing by virtue of section 5 of this Law shall be deemed to be a former licensee

under and within the meaning of this Law, the provisions of which shall apply accordingly.

(5) A person who before the commencement of this Law was at any time but had ceased to be a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986 shall be deemed to be a former licensee under and within the meaning of this Law, the provisions of which shall apply accordingly.

(6) Any reference, howsoever expressed, in any enactment, statutory instrument or rule of court to an enactment repealed and re-enacted (with or without modification) by this Law shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

Citation.

103. This Law may be cited as the Insurance Business (Bailiwick of Guernsey) Law, 2002.

Commencement.

104. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions of this Law or for different purposes.

NOTE

The Law was brought into force on 5th November, 2002 by the Insurance Business (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2002, section 1.

SCHEDULE 1 Section 2
DESCRIPTIONS OF LONG TERM BUSINESS

[*Life and Annuity*

1. Effecting or carrying out –

(a) contracts of insurance on human life or contracts to pay annuities on human life, or

(b) contracts of insurance against liabilities incurred, or contracts to make payments (whether by way of annuity or otherwise) of amounts, which are, in either case, based on or determined by reference to rates of human longevity or mortality irrespective of whether such liabilities or amounts are determined by reference to any identifiable human life or lives.]

Marriage and birth

2. Effecting or carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Linked long term

3. Effecting or carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to –

(a) the value of, or the income from, property of any description (whether or not specified in the contracts), or

(b) fluctuations in, or an index of, the value of property of any description (whether or not so specified).

Permanent health

4. Effecting or carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that –

(a) are expressed to be in effect for a period of not less than five years or until normal retirement age for the policyholder concerned, or without limit of time, and

(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Capital redemption

5. Effecting or carrying out capital redemption contracts.

Pension fund management

6. Effecting or carrying out –

(a) contracts to manage the investments of pension funds, or

(b) contracts of the description mentioned in subparagraph (a) that are combined with contracts of insurance covering conservation of capital or payment of a minimum interest.

Credit life assurance

7. Effecting or carrying out credit life assurance contracts the term of which is expressed to be for a period of not less than [10] years or which are without

limit of time.

NOTES

In Schedule 1,

paragraph 1 was substituted by the Insurance Business (Definition of Long Term Business) (Amendment) Regulations, 2004, regulation 1, with effect from 1st August, 2004;

the figures in square brackets in paragraph 7 were substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 23, with effect from 12th March, 2008.

SCHEDULE 2 Sections 30 and 51

MARGIN OF SOLVENCY,
ASSETS AND LIABILITIES

…

NOTE

Schedule 2 was repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 16, with effect from 1st May, 2015.[13]

SCHEDULE 3 Section 36

REQUIREMENTS AS TO AUDIT OF ACCOUNTS AND AUDITOR'S REPORT

General duty of auditor.

1. An auditor acting pursuant to section 36 shall carry out sufficient investigation to enable him to form an opinion as to the matters on which his opinion is required by paragraph 2 of this Schedule to be expressed in his report.

Auditor's report.

2. The report of an auditor made pursuant to section 36 shall –

(a) [subject to subparagraph (aa),] state whether, in the auditor's opinion, the accounts –

(i) have been properly prepared in accordance with Recognised Accounting Standards,

(ii) give a true and fair view of the licensed insurer's state of affairs at the balance sheet date and of its profit or loss for the financial period ending on that date, and

(iii) are in accordance with the provisions of this Law,

[(aa) in the case of companies –

(i) which are licensed insurers, and

(ii) in respect of which the Commission has, by notice in writing served on them under section 35(6), agreed to the preparation of their accounts in a form other than a form specified by the provisions of section 35 or any requirements thereunder,

state whether, in the auditor's opinion, the accounts are in accordance with the provisions of this Law as modified by the notice referred to in item (ii) above,]

(b) make specific reference to any transaction, other than a transaction in the normal course of business, which has, in the auditor's opinion, resulted in the balance sheet showing a situation materially different from that which would otherwise have obtained and which is not adequately disclosed in the accounts, and

(c) declare any respect in which, in the auditor's opinion, the information given in an annual return of the insurer prepared pursuant to section 33 is inconsistent with the accounts of the insurer for the financial year to which that annual return relates.

Statement in connection with abridged accounts.

3. If in any case the Commission approves accounts in an abridged form for the purposes of section 39 the auditor's report in relation to those abridged accounts shall include a statement that they are in the form approved by the Commission.

NOTE

In Schedule 3, first, the words in square brackets in paragraph 2(a) and, second, paragraph 2(aa) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2014, regulation 1, respectively paragraph (a) and paragraph (b), with effect from 7th November, 2014.

SCHEDULE 4 Section 65

INFORMATION IN INVITATIONS RELATIVE TO UNLICENSED INSURERS

Manner in which information is to be provided.

1. The information required under section 65(2) shall be provided in accordance with the following provisions of this paragraph –

(a) if the invitation is issued in writing and is sent or delivered, by sending or, as the case may be, by delivering with the invitation a written statement containing that information,

(b) if the invitation is issued orally, by supplying that information orally to the person to whom the invitation is issued and –

(i) if that person is present when the invitation is issued, by delivering to him immediately thereafter a written statement containing that information,

(ii) if that person is not so present, by sending by post or causing to be delivered to him as soon as reasonably practicable, at the address supplied by him for the purpose or at his last known address, a written statement containing that information.

Cases to which section 65 does not apply.

2. Section 65 does not apply to any case in which the invitation is –

(a) an invitation for the renewal or amendment of the terms of a contract of insurance effected as a result of an invitation issued in accordance with section 65 where there has been no significant change in the

circumstances relevant to the information provided when the contract was first effected,

(b) an amendment of an invitation issued in accordance with section 65 where there has been no significant change in the circumstances relevant to the information provided when the invitation was first issued.

SCHEDULE 5 Section 98(1)

GLOSSARY OF EXPRESSIONS

In this Law, unless the context requires otherwise –

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

"actuary" means a fellow of the Institute of Actuaries in England and Wales or the Faculty of Actuaries in Scotland or any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for insurers licensed to carry on long term business in or from within the Bailiwick,

"administrative or secretarial services" includes general accountancy and bookkeeping services, but not –

(a) the audit of accounts, or

(b) any services provided by an employee of the insurer concerned under his contract of employment,

"advertisement" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media,

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

"Alderney body" means an Alderney company or an unincorporated body whose principal place of business is in Alderney,

"Alderney company" means a company the memorandum and articles of which are registered in the Register of Companies within the

meaning of section 163(1) of the Companies (Alderney) Law, 1994,

"annuities on human life" does not include retirement annuity trusts, superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons,

[…]

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

(a) the spouse, child or stepchild of that person,

(b) any person who is an employee of, or who is in partnership with, that person,

(c) any body of which that person is a director,

(d) where that person is a company –

(i) any director or employee of that company,

(ii) any subsidiary of that company, and

(iii) any director or employee of any such subsidiary,

(e) where that person is an unincorporated body, any director of that body,

(f) if that person has with some other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to

a company, that other person,

"**associated party**", in relation to any person, means –

(a) any person who is in partnership with that person,

(b) any company of which that person is a controller,

(c) any body of which that person is a director,

(d) where that person is a company –

(i) a holding company, subsidiary or related company of that person,

(ii) a subsidiary or related company of a holding company of that person,

(iii) a holding company of a subsidiary of that person, or

(iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting,

and where, pursuant to the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body is an associated party in relation to that first-mentioned person or body:

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

"**auditor**" means a person who is qualified for appointment as an

auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994 and who is approved by the Commission to audit the accounts of licensed insurers,

"**auditors' management letter**" means a letter issued by the auditor of a licensed insurer to the directors or management of the licensee identifying weaknesses in the accounting and internal control systems and other matters including errors identified during the audit,

"**Bailiff**" has the meaning given by section 71(4),

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

"**Bailiwick body**" means a Guernsey body, an Alderney body or a Sark body,

"**body**" means a company or an unincorporated body,

"**business plan**" means a plan which includes a financial projection of the insurer's operations and which is in such form and contains such information as may be determined by the Commission,

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

[**"Capital Floor"** shall be determined in accordance with rules of the Commission under sections 38A to 38C, whether generally or in any particular case or class of case,]

"**capital redemption contract**" means a contract effected by an insurer (the effecting or carrying out of which does not otherwise constitute insurance business) whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the insured in the future,

[**"capital resources"** shall be determined in accordance with rules of the Commission under sections 38A to 38C, whether generally or in any particular case or class of case,]

"chief executive", in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

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

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

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

"contract of employment" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

"contract of insurance" includes any contract the effecting or carrying out of which constitutes the carrying on of insurance business,

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

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

(a) a managing director or chief executive of that company or of any other company of which that

company is a subsidiary,

(b) a shareholder controller or an indirect controller,

[(c) any person who has the power, alone or with another, to appoint or remove a director of a board or an executive committee,]

"country" includes any territory or other place,

"Court", in sections 14, 28, 63, 75, 76, 77 and 95, has the meanings respectively given in sections 14(6), 28(10), 63(10), 75(6), 76(5), 77(3) and 95(6),

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961[u],

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

"Current Personal Questionnaire" means a questionnaire**,** in a form to be determined from time to time by the Commission –

(a) which was lodged with the Commission not more than 5 years before the last calendar year end, and

(b) which does not omit information which –

(i) the insurer, or

(ii) the person in respect of whom the questionnaire is required to be lodged,

knows or has reasonable grounds to suspect is, or might reasonably be thought to be, material to the

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u Ordres en Conseil Vol. XVIII. p. 315.

assessment (pursuant to the provisions of Schedule 7) of the latter's suitability to be a person of a description set out in section 11(3),

"derivative" means a financial instrument that derives its value from the price or rate of some underlying item; and **"underlying items"** include, but are not limited to, equities, bonds, commodities, interest rates, exchange rates and stock market and other indices,

"director" includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes –

(a) the chief executive or any member of the committee or other similar governing body, and

(b) any person in accordance with whose directions or instructions any director is accustomed to act,

[**"disqualification order"** has the meaning given in section 84A,]

"documents" includes information recorded in any form (including, without limitation, in an electronic form) and –

(a) in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form,

(b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language,

"domestic business" means insurance business, excluding reinsurance business –

(a) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person who has his ordinary place of residence in the Bailiwick at the time the contract is effected against any kind of risks except risks in relation to property, or

(b) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person against risks of any kind in relation to –

(i) real property situated in the Bailiwick,

(ii) personal property which at the time the contract is effected is held or based in the Bailiwick or which is deemed in accordance with regulations made by the Commission under this paragraph to be so held or based, or

(iii) personal property which is in transit to or from the Bailiwick,

"employee" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, and cognate expressions shall be construed accordingly,

"enactment" includes an enactment of the Parliament of the United Kingdom and a Measure of the Scottish, Welsh or Northern Irish Assembly,

"equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

"financial instruments" include, but are not limited to, futures,

options, forward contracts, interest rate and currency swaps, interest rate caps, collars and floors, forward interest rate agreements, commitments to purchase shares or bonds, note issuance facilities and letters of credit, and any similar instrument by whatever name called,

"financial year" means the period covered by the licensee's accounts in respect of its business, being the accounts required to be deposited with the Commission by section 37,

"former licensee" means a person who –

(a) is not or is not deemed to be a licensee, but

(b) has previously been a licensee,

and also includes any person described in section 102(4) or (5),

"general business" means insurance business other than long term business,

"general representative", in relation to a licensed insurer, means the insurer's general representative for the purposes of section 29,

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

"Guernsey body" means a Guernsey company or an unincorporated body whose principal place of business is in Guernsey,

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

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

"holding company" has the meaning given in Schedule 8, subject to any regulations under paragraph 5 of that Schedule,

"incidental" means, for the purposes of section 7(2)(h), no more than 5% of the total premium income of the insurer in any financial year,

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

"inspector" means a person appointed by the Commission under section 69(1),

"insurance" includes assurance and reinsurance,

"insurance advertisement" means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance; and an advertisement containing information which is intended or which might reasonably be presumed to be intended to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them so to do,

"insurance business" means the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or through an agent, and includes –

(a) the effecting or carrying out, by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums,

(b) the effecting or carrying out, by a person (not being a body carrying on a banking business) who carries on business which is insurance business apart from this paragraph, of –

(i) capital redemption contracts,

(ii) contracts to manage the investments of pension funds (other than funds solely for the benefit of his own officers or employees and their dependants or, in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company) which are combined with contracts of insurance,

(c) the effecting or carrying out of contracts to pay annuities on human life,

and for the purposes of this Law a person shall not be considered to carry on insurance business solely by reason of the fact that he –

(A) is a member of the Society of Lloyd's,

(B) effects or carries out a contract of reinsurance with a licensed insurer in the Bailiwick (unless his principal place of business is in the Bailiwick), or

(C) invests in shares or in some other way participates in the results of an insurer:

Provided always that the Commission may by regulation amend this definition of the expression "insurance business",

"**insurer**" means a person carrying on, or holding himself out as carrying on, insurance business,

"**insurers' code of conduct**" means a code of conduct for licensed insurers issued by the Commission from time to time for the purposes of this Law,

"**licence**" means a licence granted under section 7,

"**licensed insurance intermediary**" means a person for the time being licensed as an insurance intermediary under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

"**licensed insurance manager**" means a person for the time being licensed as an insurance manager under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

"**licensed insurer**" means an insurer for the time being licensed under section 7 and includes an insurer carrying on business in such circumstances as not to require licensing by virtue of section 5,

"**licensee**" means a licensed insurer,

"**list**", in section 17, means the list of licensed insurers required to be kept under that section,

"**long term business**" means, subject to section 2(3) and (4), insurance business of any of the descriptions set out in Schedule 1,

"**long term policyholder**" means a policyholder in respect of a policy the effecting of which by the insurer constituted the carrying on of long term business,

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

executive of the company –

(a) exercises managerial functions, or

(b) is responsible for maintaining accounts or other records of the company,

[**"member"** in respect of a company has the same meaning as in the Companies (Bailiwick of Guernsey) Law, 2008[ua],]

[…]

"modifications" includes exceptions, adaptations and additions,

"name", in sections 18 to 24, includes trading name,

[…]

"officer of police" means a member of the salaried police force of the Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972[v] and –

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

(b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under

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ua Order in Council No. VIII of 2008.

v Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

section 46A] of the Government of Alderney Law, 1987[w],

(c) in relation to Sark, the Constable and the Vingtenier,

"**partnership**" has the meaning given by section 1 of the Partnership (Guernsey) Law, 1995[x], and cognate expressions shall be construed accordingly,

"**person**" includes a body of persons (whether a company or an unincorporated body),

"**policy**" –

(a) in relation to long term business, includes an instrument evidencing a contract to pay an annuity upon human life,

(b) in relation to insurance business of any other description, includes a policy under which there is for the time being an existing liability already accrued or under which a liability may accrue, and

(c) in relation to capital redemption contracts, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the insurer,

"**policyholder**" means the person who for the time being is the legal holder of the policy securing the contract with the insurer or, in relation to capital redemption business, the person who for the time being is the legal holder of the policy, bond, certificate, receipt or other instrument evidencing

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

x Order in Council No. VIII of 1995.

the contract with the insurer, and –

(a) in relation to long term business involving the granting of annuities upon human life, includes an annuitant, and

(b) in relation to insurance business of any kind other than such as is mentioned in the foregoing paragraph or capital redemption contracts, includes a person to whom, under a policy, a sum is due or a periodic payment is payable,

"pool" means an arrangement which is created when a number of insurers agree that all insurances of a particular character shall be shared amongst them in specified proportions,

[**"prohibition order"** has the meaning given in section 28A,]

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Protected Cell Companies Ordinance, 1997,

"public" means the public in the Bailiwick or elsewhere,

"Recognised Accounting Standards" means accounting standards (which expression shall include any insurance industry recommended practice, by whatever name or description issued) which are for the time being approved by the Commission,

"recognised insurer" means the following –

(a) any person who is licensed as an insurer under this Law in respect of the description of insurance business concerned,

(b) any person who is entitled to carry on the description

of insurance business concerned in or from within the Bailiwick without being licensed as an insurer under this Law by virtue of section 5,

(c) any […] insurer for the time being included (specifically or by description) in a list of recognised insurers maintained and published by the Commission,

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

"**Registrar**" means the Clerk of the Court of Alderney, exercising functions under the Companies (Alderney) Law, 1994,

"**regulations**" means regulations made by the Commission or, as the case may be, by the [Policy Council] under this Law,

"**regulatory Laws**" means –

(a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987[y],

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994[z],

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of

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

z Order in Council No. XIII of 1994.

Guernsey) Law, 2000[aa],

[(ca) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,

(cb) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

(cc) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,]

(d) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission,

"related company", in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest; and for the purposes of this Law –

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,

(b) where –

(i) a company holds a qualifying capital interest in another company, and

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aa Order in Council No. I of 2000.

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above, unless the contrary is shown, and

(c) in paragraph (b) **"relevant shares"** means, in relation to any company, any such shares in that company as are mentioned in paragraph (a),

[**"relevant person"** has the meaning given in section 69(12),]

"Relevant Professional Standards" for the purposes of section 41 means those professional standards from time to time approved by the Commission for the purposes of that section,

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

(a) functions corresponding to any functions of the Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or under the regulatory Laws, or

(b) such other functions as the Commission may by regulation prescribe,

[…]

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

(a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and

(b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,]

"Sark body" means any body, other than a Guernsey company or an Alderney company, whose principal place of business is in Sark,

"shareholder controller" –

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

(b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company,

"shareholders' funds" means the value of the excess of an insurer's assets over its liabilities; and for the purposes of this definition the expression **"liabilities"** excludes share capital, retained reserves and loans from shareholders where they are subordinated, in writing, to the prior claims of all other creditors,

"significant shareholder", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power in general meeting of that company or of any other company of which that company is a subsidiary, [and a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever –

(i) becomes entitled to do so as a member of a company, or

(ii) acquires any interest which may entitle him to be a member of that company,]

"States" means the States of Guernsey,

"subsidiary company" has the meaning given in Schedule 8, subject to any regulations under paragraph 5 of that Schedule, and **"subsidiary"** has the same meaning,

"syndicate" means a group of underwriters on whose behalf insurances are accepted, each underwriter taking a proportion of the insurances for himself without assuming liability for the insurances taken by the other members of the group,

[**"third party insurance enactments"** means –

(a) the Road Traffic (Compulsory Third Party Insurance) (Guernsey) Law, 1936,

(b) the Road Traffic (Compulsory Third Party Insurance) (Alderney) Law, 1950,

(c) the Steam Boilers (Insurance) Ordinance, 1952,

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

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

(f) the Tractors (Sark) Law, 1974,

(g) the Employers' Liability (Compulsory Insurance) (Guernsey) Law, 1993,

(h) the Employers' Liability (Compulsory Insurance) (Alderney) Law, 1994,

(i) the Firearms (Guernsey) Law, 1998,

(j) the Firearms (Sark) Law, 2001,

(k) any other enactment prescribed by regulations of the States Commerce and Employment Department made after consultation with the Commission; and –

(i) regulations made under this paragraph may amend or repeal any of the preceding paragraphs of this definition,

(ii) section 86(c) (regulations to be laid before the States) applies to any regulations made under this paragraph,]

"working day" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958[bb].

NOTES

In Schedule 5,

first, the words omitted in square brackets immediately preceding the definition of the expression "associate" were repealed, second, the definition of the expressions "Capital Floor" and, third, "capital resources" were inserted, and the words omitted in square brackets immediately preceding the definitions of the expressions, fourth, "modifications", fifth, "officer of police" and, sixth, "Royal Court" were repealed by the

bb Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 17, respectively paragraph (a), paragraph (b), paragraph (c), paragraph (d), paragraph (e) and paragraph (f), with effect from 1st May, 2015;

the words in square brackets in the definitions of the expressions "Council" and "regulations" were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

paragraph (c) of the definition of the expression "controller" was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 32(a), with effect from 12th March, 2008;

the definition of the expression "disqualification order" was inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2008, section 5, with effect from 10th December, 2008;

the definitions of the expressions "member", "prohibition order" and "relevant person" were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, respectively section 32(b), section 32(c) and section 32(e), with effect from 12th March, 2008;

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

the word omitted in square brackets in paragraph (c) of the definition of the expression "recognised insurer" was repealed, and the definition of the expression "third party insurance enactments" was inserted, by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2011, respectively section 5(a) and section 5(b), with effect from 30th November, 2011;

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

the words in square brackets in the definition of the expression "Royal Court" were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 32(d), with effect from 12th March, 2008;

the words in square brackets in the definition of the expression "significant shareholder" were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 32(f), with effect from 12th March, 2008.

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

The following Regulations have been made under Schedule 5:

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

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

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e)(ii), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court, including the functions of Registrar under the Companies (Alderney) Law, 1994.

The Companies (Guernsey) Law, 1994 and the Protected Cell Companies Ordinance, 1997 have since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, respectively paragraph 4(1)(a) and paragraph 4(1)(l), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

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

The Tractors (Sark) Law, 1974 has since been repealed by the Motor Vehicles (Sark) Law, 2013, section 45, Schedule, with effect from 6th October, 2014, subject to the savings and transitional arrangements in section 42 of the 2013 Law.

SCHEDULE 6 Section 100

REPEALS AND AMENDMENTS

PART I

REPEALS

	1. ENACTMENT	2. EXTENT OF REPEAL
1.	Insurance Business (Guernsey) Law, 1986[cc].	The whole Law.
2.	Financial Services Commission (Bailiwick of Guernsey) Law, 1987[dd].	In Schedule 2, paragraphs 18 to 24.
3.	Banking Supervision (Bailiwick of Guernsey) Law, 1994[ee].	Section 59(2).

cc Ordres en Conseil Vol. XXIX, p. 214.

dd Ordres en Conseil Vol. XXX, p. 243.

ee Order in Council No. XIII of 1994.

4.	Insurance Business (Amendment) (Guernsey and Alderney) Law, 1997[ff].	The whole Law.
5.	Insurance Business (Amendment) (Guernsey and Alderney) Law, 1998[gg].	The whole Law.
6.	Insurance Business (Bailiwick of Guernsey) Law, 1999[hh].	The whole Law.
7.	Insurance Business (Guernsey) Law, 1986 (Commencement) Ordinance, 1986[ii].	The whole Ordinance.
8.	Insurance Business (Limitation of Liability) Ordinance, 1990[jj].	The whole Ordinance.
9.	Insurance Business (Amendment) (Guernsey and Alderney) Law, 1998 (Commencement) Ordinance, 1998[kk].	The whole Ordinance.

ff Order in Council No. III of 1997.
gg Order in Council No. II of 1998.
hh Order in Council No. XI of 1999.
ii Recueil d'Ordonnances Tome XXIII, p. 488.
jj Recueil d'Ordonnances Tome XXV, p. 143.
kk Ordinance No. XIII of 1998.

PART II

AMENDMENTS

1. ENACTMENT	2. AMENDMENT
1. Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936[ll].	For section 3(3)(b)(iv) substitute – "(iv) such assurance company is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the description set out in subsection (1) of this section, by virtue of section 5 of that Law;".
2. Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969[mm].	In section 1(2) for the words beginning with "and a company shall not be so approved" to the end of the section substitute – "and a company shall not be so approved unless it is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the description set out in subsection (1) of this section, by virtue of section 5 of that

[ll] Ordres en Conseil Vol. X, p. 388; subparagraph (iv) was inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

[mm] Ordres en Conseil Vol. XXII, p. 2; the words substituted were inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

		Law".
3.	Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring charges and Removal of Boats) (Guernsey) Law, 1972[nn].	In section 1(5) for the words beginning with "and a company shall not be so approved" to the end of the section substitute – "and a company shall not be so approved unless it is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the descriptions set out in the preceding subsections of this section, by virtue of section 5 of that Law".
4.	Income Tax (Guernsey) Law, 1975[oo].	In section 188 for the definition of "insurance company" substitute the following – ""**insurance company**" means any insurer which is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 in respect of long term business and any insurer which is exempt from the requirements of that Law to be licensed in respect of long term business by virtue of section 5 of that Law;".
5.	Insurance Business (Financial Guarantee Insurance: Special	In section 4(1) for the words "Insurance Business (Guernsey) Law, 1986"

[nn] Ordres en Conseil Vol. XXIII, p. 515; the words substituted were inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

[oo] Ordres en Conseil Vol. XXV, p. 124; the definition substituted was inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

Provisions) (Guernsey) Law, 1996[pp].	substitute "Insurance Business (Bailiwick of Guernsey) Law, 2002".
6. Financial Guarantee Insurance (Peak International Limited) Ordinance, 1997[qq].	(a) In section 9(7), the words following "any question of law" are repealed. (b) In section 27(1)(b), for the words "an authorised insurance manager within the meaning of the Insurance Business (Guernsey) Law, 1986" substitute "a licensed insurance manager within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002". (c) In section 29(2) in the definition of "insurance business", for the words "Insurance Business (Guernsey) Law, 1986" substitute "Insurance Business (Bailiwick of Guernsey) Law, 2002".

pp Order in Council No. XIII of 1996.

qq Ordinance No. XV of 1997.

[SCHEDULE 7
MINIMUM CRITERIA FOR LICENSING

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 –

(a) with prudence and integrity,

(b) with professional skill appropriate to the nature and scale of his activities, and

(c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his business, the applicant or licensee shall at all times act in accordance with the following documents –

(a) issued by the Commission,

(i) the Principles of Conduct of Finance Business, and,

(ii) any rules, codes, guidance, principles and instructions issued from time to time under this Law and any other enactment as may be applicable to him, and

(b) any guidance notes or international standards issued by a body recognised by the Commission relating to insurance and regulation which are identified in a code issued under this Law.

Economic benefit.

2. …

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,

(iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(v) the Disclosure (Bailiwick of Guernsey) Law, 2007,

(vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds (Sark) Ordinance, 2007,

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

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

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

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

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

(b) contravened any provision contained in or made under –

(i) this Law,

(ii) the regulatory Laws,

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

(iv) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –

(A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (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

(B) 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 (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law, or

(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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

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

(b) **"offence"** includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

(c) **"enactment"** includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Business to be directed by at least two individuals.

4. (1) At least two individuals who are –

(a) of appropriate standing and experience, and

(b) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensee.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

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

(a) he maintains or, as the case may be, will maintain –

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) he maintains or, as the case may be, will maintain adequate liquidity, having regard to –

(i) the relationship between his liquid assets and his actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and his assets will mature,

(iii) the nature and scale of his operations,

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

(v) any other factors appearing to the Commission to be relevant,

(c) he makes or, as the case may be, will make adequate provision for –

(i) depreciation or diminution in the value of his assets (including provision for bad or doubtful debts),

(ii) liabilities which will or may fall to be discharged by him, and

(iii) losses which he will or may incur,

(d) he maintains or, as the case may be, will maintain –

(i) adequate accounting and other records of his business, and

(ii) adequate systems of control of his business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), in determining whether an applicant or licensee is to be regarded as conducting his business in a prudent manner, the Commission shall also have regard 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, and

(c) the complaints history of the applicant or licensee[, and

(d) where the applicant or licensee is a company, whether the structure or organisation of the group of which the applicant or licensee is a part hinders effective supervision].

(4) For the purposes of –

(a) subparagraph 2(a), an appropriate amount is –

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

(ii) an amount and nature sufficient to safeguard the interests of his clients and policyholders, having regard to –

(A) the nature and scale of his operations,

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

(C) any other factors appearing to the Commission to be relevant,

(b) subparagraph 2(b), in considering the liquid assets of an applicant or licensee, the Commission may, to such extent as it thinks appropriate, take into account –

(i) the assets of the applicant or licensee, and

(ii) the facilities which are available to him, which are capable of providing liquidity within a reasonable period, and

(c) subparagraph 2(d) –

(i) records and systems shall not be regarded as adequate unless they are such as to enable –

(A) the business of the applicant or licensee to be prudently managed, and

(B) the applicant or licensee to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 3(2)(i), and

(ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

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 set out in this Schedule.

Power to make regulations.

7. The [Policy Council] may, in accordance with section 86, make regulations amending the provisions of this Schedule.]

NOTES

Schedule 7 was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 1, with effect from 23rd January, 2008.

In Schedule 7,

paragraph 2 was repealed by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 1, with effect from 23rd January, 2008;

subparagraph (3)(d) of paragraph 6, and the word immediately after subparagraph (3)(c) thereof, were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2010, regulation 1, with effect from 24th February, 2010;

the word in square brackets in paragraph 7 was substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

SCHEDULE 8 Section 98 & Schedule 5

Meaning of "holding company" and "subsidiary company".

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

(a) that other –

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital, or

(b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power,

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company,

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

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

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

(b) subject to paragraphs (c) and (d), any shares held or power exercisable –

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded,

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The [Policy Council] may make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law.

NOTE

In Schedule 8, the word in square brackets in paragraph 5 was substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

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1 See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

2 Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

3 Prior to its substitution, section 30 was amended by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 10 and section 11, with effect from 12th March, 2008.

4 Prior to their substitution, subparagraph (m) and subparagraph (n) were inserted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 18, with effect from 12th March, 2008.

5 See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

6 Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

7 See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

8 Previous transfers of functions were made by the Sark General Purposes and

Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

9 See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

10 Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

11 See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

12 Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

13 Prior to its repeal, Schedule 2 was amended by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 24, section 25, section 26, section 27, section 28, section 29, section 30 and section 31, with effect from 12th March, 2008.