

PROJET DE LOI

ENTITLED

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 ^a

^a Order in Council No. XXII of 2002; amended by Ordinance No. XXXIII of 2003 (Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003); Order in Council No. III of 2005 (the Government of Alderney Law, 2004); Ordinance No. XIII of 2008 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008); Ordinance No. IX of 2010 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2010); Ordinance No. XXXII of 2010 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010); Order in Council No. XIII of 2010 (Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 (No. XII); G.S.I. No. 2 of 2008 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008); G.S.I. No's. 16 and 83 of 2010; the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Single Euro Payments Area (Guernsey) Ordinance, 2016 (No. II of 2016); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Transfer of Funds (Alderney) Ordinance, 2017 (Alderney Ordinance No. III of 2017); the Transfer of Funds (Guernsey) Ordinance, 2017 (No. ** of 2017); the Transfer of Funds (Sark) Ordinance, 2017 (Sark Ordinance No. X of 2017); the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017 (G.S.I. No. 50 of 2017); the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (No. VI of 2017). Brought into force on 5th November, 2002 by Ordinance No. XIX of 2002 (The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2002).

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The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, ~~2002~~2018

THE STATES, in pursuance of their Resolution of the ~~26th day of June, 2002~~^b30th October, 2015^c and the 27th November, 2015^d, 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

INSURANCE MANAGERS & INSURANCE INTERMEDIARIES

Insurance managers

Restriction on acting as insurance manager.

1. (1) A person shall not act in or from within the Bailiwick as an insurance manager except under the authority of and in accordance with the conditions of a licence granted under section 4.

^b ~~Article V of Billet d'État No. XIII of 2002.~~

^c Article V of Billet d'État No. XVIII of 2015.

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

(2) For the purposes of this Law, except to the extent that in any particular case the Commission may otherwise direct, a person acts in or from within the Bailiwick as an insurance manager if -

- (a) by way of business as an insurance manager, 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 or otherwise that he may be contacted at a particular address in the Bailiwick;
- (b) he invites a person, by issuing an advertisement (in any place or country whatsoever) or otherwise, to enter into or offer to enter into a contract whereby he will act as an insurance manager in or from within the Bailiwick; or
- (c) he otherwise acts or is seen to be acting as an insurance manager in or from within the Bailiwick;

but, for the avoidance of doubt, a person is not to be regarded as acting in or from within the Bailiwick as an insurance manager for the purposes of this Law merely because he contacts or visits a client in the Bailiwick at the request of that client.

(2A) For the purposes of subsection (2) -

- (a) an application for a direction under that subsection shall

be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,

(b) the application shall be accompanied by such fee as may be prescribed by regulations under section 71,

(c) the application may be refused or granted subject to such conditions as the Commission may consider necessary or expedient,

(d) 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,

(e) the direction may be revoked or varied at any time by the Commission by written notice to the person to whom it was made,

(f) any such variation may include the attachment of such conditions, or the removal or modification of such conditions previously attached, as the Commission may think fit,

(g) the direction shall, subject to the provisions of paragraph

(e), be valid for such period (if any) as the Commission may determine, and

(h) if, whether before or after the making of a direction, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant or (as the case may be) the person to whom the direction was granted for the purposes of the application or direction (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant or that person shall inform the Commission of the change, as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and

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

(3) In this Law "**insurance manager**" means a person who exercises, in relation to any insurer of which he is not an employee, managerial functions (including administration and underwriting) or such other functions as may be prescribed by the Commission by regulation.

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

(5) A person who without reasonable excuse fails to inform the Commission in accordance with subsection (2A)(h) is guilty of an offence.

Insurance intermediaries

Restriction on acting as insurance intermediary.

2. (1) Subject to subsection (4), a person shall not -
- (a) carry on business as an insurance intermediary;
 - (b) profess to carry on business as an insurance intermediary;
or
 - (c) except where he has first obtained the permission of the Commission in that behalf under section [3450 of the Enforcement Powers Law](#) and is acting in accordance with the conditions of that permission, use as a description the word "adviser", "broker" or "consultant" in combination with the word "insurance", ~~or~~ "re-insurance" or "assurance", or use any other description (whether in English or any other language) which might reasonably be understood to imply that that person carries on business

as an insurance intermediary;

in or from within the Bailiwick, unless that person is a licensed insurance intermediary or (in the case of paragraphs (a) and (b)) a licensed insurer; and a person who is remunerated in whole or in part for services or work provided in the course of the business of an insurance intermediary otherwise than by fees paid by clients must not use as a description the word "consultant" in combination with the word "insurance", "re-insurance" or "assurance".

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

(3) For the purposes of this Law, except to the extent that in any particular case the Commission may otherwise direct, ~~an insurance intermediary a~~ person professes to carry on business as an insurance intermediary in or from within the Bailiwick if -

- (a) by way of business as an insurance intermediary, 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 or otherwise that he may be contacted at a particular address in the Bailiwick;
- (b) in or from within the Bailiwick, he invites a person, by issuing an advertisement (in any place or country whatsoever) or otherwise, to become or offer to become a

client of his; or

- (c) he ~~is~~ otherwise carries on or is seen to be carrying on business as an insurance intermediary in or from within the Bailiwick;

but, for the avoidance of doubt, a person is not to be regarded as professing to carry on business as an insurance intermediary in or from within the Bailiwick for the purposes of this Law merely because he contacts or visits a client in the Bailiwick at the request of that client.

(3A) For the purposes of subsection (3) -

- (a) an application for a direction under that subsection shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,
- (b) the application shall be accompanied by such fee as may be prescribed by regulations under section 71,
- (c) the application may be refused or granted subject to such conditions as the Commission may consider necessary or expedient,
- (d) 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,

(e) the direction may be revoked or varied at any time by the Commission by written notice to the person to whom it was made,

(f) any such variation may include the attachment of such conditions, or the removal or modification of such conditions previously attached, as the Commission may think fit,

(g) the direction shall, subject to the provisions of paragraph (e), be valid for such period (if any) as the Commission may determine, and

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

soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and

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

(4) The Commission may by regulations made under this subsection exempt from the requirement to be licensed under this section, either generally or in respect of such activities and/or subject to such conditions as are specified by or under the regulations -

- (a) a person whose business as an insurance intermediary is incidental to some other business and is confined to the insurance of goods or services sold by that person;
- (b) the sale of a policy of insurance as part of a contract to provide goods or services;
- (c) such other activities as may be specified by the Commission by regulations under this ~~paragraph~~subsection.

(5) An "**insurance intermediary**" is a person other than an insurance representative who by way of business -

- (a) advises clients on their insurance requirements; and/or
- (b) arranges contracts of insurance between insurers and clients.

(6) An "**insurance representative**" is an individual who acts on behalf of, and under a contract of agency or employment with, an insurer or insurance intermediary, for the purpose of arranging contracts of insurance for clients and giving advice to those clients; and an "**authorised insurance representative**" means an insurance representative authorised, by a licensed insurance intermediary, licensed insurer or licensed insurance manager, in accordance with section 15.

(7) A "**licensed insurer**" is a person who is for the time being a licensed insurer within the meaning of the Insurance Business [Law \(Bailiwick of Guernsey\) Law, 2002](#).

(8) The Commission may by regulation -

- (a) amend subsection (1) by adding any word to, or removing any word from, the words the use of which as a description is for the time being thereby regulated, and
- (b) specify any description the use of which by any person

shall be deemed for the purposes of subsection (1)(c) to imply, in respect of that person, that that person carries on business as an insurance intermediary.

(9) A person who without reasonable excuse fails to inform the Commission in accordance with subsection (3A)(h) is guilty of an offence.

PART II

LICENSING OF INSURANCE MANAGERS & INSURANCE INTERMEDIARIES

Application for insurance manager's or insurance intermediary's licence.

3. (1) A person wishing to be licensed as an insurance manager or insurance intermediary shall apply in that behalf to the Commission.

(2) An application under this section shall state in or from within which of the islands of the Bailiwick the applicant proposes to act as an insurance manager or, as the case may be, to carry on business as an insurance intermediary.

(3) An application under this section shall be made in such form and manner as the Commission may by ~~regulation~~ rules under sections 18 to 18AB determine and shall be accompanied by -

- (a) a statement of the applicant's proposed business as an insurance manager or insurance intermediary;

- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application;
- (c) the appropriate fee prescribed by regulations under section 71; and
- (d) anything else prescribed by ~~regulations under this subsection~~ rules of the Commission under sections 18 to 18AB;

provided that where the applicant is already a licensed insurance manager or licensed insurance intermediary the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any statement or information provided by him in connection with a previous application has changed.

(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 authorised insurance representative~~ the holder of a supervised role in respect of the applicant to provide such additional information ~~and, statements and other~~ documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information ~~or~~ statement or other document to be provided to the Commission under this section shall be in such form as the Commission may

require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (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 or other document as the Commission may specify;
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement, document or report or anything in them.

(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.

(7A) An application under this section is deemed to be withdrawn if -

- (a) the applicant has failed for -
 - (i) a period of three months, or

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

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

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

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

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

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

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

(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 act as an insurance manager, or to carry on business as an insurance intermediary, 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-Finance~~ Committee of the Chief Pleas of Sark.

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

(10) If at any time a licensee proposes to act as an insurance manager, or to carry on business as an insurance intermediary, in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (8).

Grant or refusal of insurance manager's or insurance intermediary's licence.

4. (1) The Commission may, upon receipt of an application under section 3 from a person wishing to be licensed as an insurance manager or insurance

intermediary -

- (a) subject to the provisions of subsection (2), grant the application; or
- (b) ~~subject to the provisions of section 41,~~ 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 3 to act as an insurance manager or (as the case may be) to carry on business as an insurance intermediary unless -

- (a) the Commission is satisfied that the criteria specified in Schedule 4 (the “minimum criteria for licensing”) 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 authorised insurance representative~~ the holder of an approved supervised role or vetted supervised role in respect of the applicant;
- (b) the Commission is satisfied that the applicant intends,

upon being licensed, to act in or from within the Bailiwick as an insurance manager or (as the case may be) to carry on business as an insurance intermediary 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 -
 - (i) have any proprietary, financial or other interest in or connection with the applicant; or
 - (ii) direct the operations of the applicant;
- (d) the Commission is satisfied that the applicant has sufficient special knowledge and practical experience of insurance business to act as an insurance manager or (as the case may be) to carry on business as an insurance intermediary;
- (e) the Commission ~~believes-is satisfied~~ that the interests of the public, ~~policyholders or potential policyholders or clients or potential clients (in the case of an insurance intermediary), or and~~ the reputation of the Bailiwick as a finance centre, would not be jeopardised by the applicant

acting as an insurance manager or (as the case may be) carrying on business as an insurance intermediary;

(f) 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 to act as an insurance manager or (as the case may be) to carry on business as an insurance intermediary;

(g) the applicant, where it is a ~~company body~~, has demonstrated to the satisfaction of the Commission that, in relation to every person who is or is to be a controller of the applicant -

(i) the interests of the public, ~~policyholders and potential policyholders and the applicant's clients (where the applicant is an insurance intermediary)~~, 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 4 minimum~~

[criteria for licensing](#) 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) the Commission is satisfied that -

(i) the applicant will maintain, in such manner and in such amounts as the Commission may from time to time determine, adequate professional indemnity insurance; ~~and~~

(ii) the applicant will, in such manner as the Commission may from time to time determine, [and without prejudice to the provisions of rules of the Commission under sections 18 to 18AB](#), keep clients' money separate from ~~his~~ [the applicant's](#) own money and maintain separate client accounts; ~~and~~

(iii) [where the applicant is a company with a share capital](#), the applicant will maintain shareholders' funds of an amount equal to or exceeding the Minimum Capital Requirement, ~~and~~

~~(iv) [where the applicant is not a company with a share](#)~~

capital, the Commission is satisfied that it has a level of non-distributable funds of an amount equal to or exceeding the Minimum Capital Requirement;

(i) in the case of an application to carry on business as an insurance intermediary, the Commission is satisfied that-

(i) the applicant will take responsibility for the actions and conduct of his authorised insurance representatives when acting or purporting to act under their authorisations, and will meet his obligations under section 15(2);

(ii) [*repealed*]; and

(iii) the applicant -

(A) will maintain a permanent establishment in the Bailiwick, where any document addressed to him may validly be served; or

(B) has appointed a person approved by the Commission who has and is obliged to retain such an address and also, if the applicant is not a Bailiwick body or an

individual ordinarily resident in the Bailiwick, who has and will retain full power to act generally on behalf of the applicant in relation to his business as an insurance intermediary; and

- (j) the Commission is satisfied that the applicant will comply generally, and will take all reasonable measures to ensure that his authorised insurance representatives comply, with the provisions of this Law ~~(and any Ordinance, regulation or rule under it), with all applicable Conduct of Business Rules and codes issued under this Law,~~ and with any condition subject to which the Commission may grant the application.

(3) In considering whether or not to grant an application under section 3, the Commission, without limitation and so far as relevant, may take into account -

- ~~(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 Committee under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^e in~~

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

~~relation to insurance business; and~~

~~(b) may take into account~~

~~(i) any guidance notes or international standards relating to insurance and regulation issued by a body recognised by the Commission and identified in a code issued under this Law;~~

~~(bii)~~ the provisions of any code of practice or guidance issued under this Law or section 57 or 120 of the Enforcement Powers Law; and

~~(bii)~~ any matter to which it may have regard under section 928 or 29 of the Enforcement Powers Law when considering whether or not to suspend or 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 71 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 40, notice in writing of the decision.~~

(6) The Commission may grant to a person who does not normally carry on business in or from within the Bailiwick a temporary licence as an insurance intermediary, and may in such a case waive the requirement to be satisfied as mentioned in subparagraph (iii) of subsection (2)(i).

Insurance manager's and insurance intermediary's licence.

5. (1) Upon approving an application under section 3 from a person wishing to be licensed as an insurance manager or insurance intermediary 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 or as may be prescribed by rules of the Commission under sections 18 to 18AB.

(2) A licensed insurance manager or licensed insurance intermediary 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, expiry or surrender of the licence.

(3) Except when required by or under subsection (2) to deliver its licence to the Commission, and subject to the provisions of rules of the Commission under sections 18 to 18AB, a licensed insurance manager or licensed insurance intermediary 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) 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.

Period of validity of insurance manager's and insurance intermediary's licence.

6. 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 [929 of the Enforcement Powers Law](#) or surrendered under section 10 [of this Law](#).

Conditions of insurance manager's and insurance intermediary's licence.

7. (1) The Commission may, ~~subject to the provisions of section 41,~~ 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 -
 - (a) to licensed insurance managers or licensed insurance intermediaries generally;
 - (b) to any class of licensed insurance manager or licensed

insurance intermediary; or

- (c) to any particular licensed insurance manager or licensed insurance intermediary.

(3) The Commission may, ~~subject to the provisions of section 41 by notice in writing,~~ 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, ~~policyholders and potential policyholders, clients (in the case of an insurance intermediary)~~ and the reputation of the Bailiwick as a finance centre; and conditions may (without limitation) -

- (a) require the licensee 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 business as an insurance manager or (as the case may be) as an insurance intermediary;
- (c) prohibit the licensee from soliciting (whether at all or in any specified manner) business as an insurance manager or (as the case may be) as an insurance intermediary, either generally or from particular persons or classes of persons;

- (d) prohibit the licensee from entering into any other transaction or class of transactions;
- (e) require the removal of any ~~director, controller, manager, partner, employee or authorised insurance representative of person who is the holder of a supervised role in respect of, or who is an officer, employee, auditor or actuary of,~~ the licensee;
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensee;
- (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) in respect of a licensed insurance manager, permit the licensee to act in or from within the Bailiwick as an insurance manager only in respect of the insurer or insurers specified in the licence;
- ~~(i) require a licensee 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;~~

~~(i) require a licensee to provide evidence of -~~

~~(i) compliance with -~~

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

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

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

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

~~(j) where the licensee has not fully complied with any~~

~~condition or or fulfilled anything mentioned in paragraph (i)(i) or (ii) and a notice of revocation has been issued to the licensee by virtue of section 9, require the licensee to take all reasonable steps to procure the transfer of all or any of the licensee's clients to another licensed insurance manager or (as the case may be) to another licensed insurance intermediary acceptable to the Commission where a notice of revocation or proposed revocation of licence has been issued to the licensee under the provisions of the Enforcement Powers Law, require the licensee to take all reasonable steps to procure the transfer of all or any of its clients or policyholders to another licensee acceptable to the Commission;~~

(k) ~~require the licensee 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);~~

(l) require a licensee to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission.

(5) A licensee 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 [suspension or revocation of the licence \(see sections 28 and 29 of the Enforcement Powers Law\)](#) but shall not of itself invalidate any contract entered into or transaction completed before the date of [suspension or](#) revocation.

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

(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 4 [of this Law](#) or ~~9~~[section 28 or 29 of the Enforcement Powers Law](#) when considering whether or not to grant an application for a licence or ~~to (as the case may be) to suspend or~~ 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, policyholders and potential policyholders, clients (in the case of an insurance intermediary) and the reputation of the Bailiwick as a finance centre.~~

~~(10) Where the Commission decides, otherwise than with the~~

~~agreement of the licensee concerned, to impose, vary or rescind any condition in respect of a licence, the Commission shall serve upon the licensee concerned, in accordance with the provisions of section 40, notice in writing of the decision setting out particulars of the condition in question.~~

~~Suspension of insurance manager's or insurance intermediary's licence.~~

~~8. —…… [repealed]~~

~~Revocation of insurance manager's or insurance intermediary's licence.~~

~~9. — (1) — The Commission may, subject to the provisions of section 41, revoke a licence held by a licensed insurance manager or licensed insurance intermediary if it appears to the Commission that—~~

~~(a) — any of the criteria of Schedule 4 are not or have not been fulfilled—~~

~~— (i) — in relation to the licensee; or~~

~~(ii) — in relation to any person who is or is to be a director, controller, partner, manager, authorised insurance representative or employee of the licensee;~~

~~(b) — the licensee 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) — 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 under it) —~~

~~(i) — by or on behalf of the licensee; or~~

~~(ii) — by or on behalf of a person who is or is to be a director, controller, partner, manager, authorised insurance representative or employee of the licensee;~~

~~(d) — the interests of the public, policyholders or potential policyholders or clients (in the case of an insurance intermediary), or the reputation of the Bailiwick as a finance centre, are in any way jeopardised, whether by the manner in which the licensee is conducting or proposes to conduct its affairs or for any other reason;~~

- ~~(e) — any fee prescribed by regulations under section 71 payable by the licensee or payable in respect of the licence has not been paid;~~
- ~~(f) — a relevant supervisory authority in a country outside the Bailiwick has withdrawn from the licensee an authorisation corresponding to a licence under this Law;~~
- ~~(g) — a composition or arrangement with creditors has been made in respect of the licensee, or a receiver has been appointed in respect of, or possession has been taken of, any property of the licensee by or on behalf of its creditors or the holders of debentures issued by it;~~
- ~~(h) — an event has occurred in a country outside the Bailiwick in relation to the licensee which, in the opinion of the Commission, corresponds as nearly as may be to any event described in paragraph (g), (j), (k) or (l);~~
- ~~(i) — the licensee has not acted in or from within the Bailiwick as an insurance manager or (as the case may be) has not carried on business as an insurance intermediary in or from within the Bailiwick within a period of 12 months beginning on the day on which the licence was granted or, having so acted or so carried on such business, has~~

~~subsequently not done so for any period of more than 12 consecutive months;~~

~~(j) a declaration of insolvency has been made in respect of the licensee or the affairs of the licensee 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;~~

~~(k) an interim vesting order has been made against the licensee in respect of any real property in the Bailiwick;~~

~~(l) 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 licensee or the licensee has passed a special resolution requiring it to be wound up voluntarily;~~

~~(m) in the case of an insurance intermediary, his authorised insurance representative has failed to satisfy an obligation to which he is subject by virtue of this Law; or~~

~~(n) a person has become a controller, partner or director of the licensee in contravention of regulations made under section 36A or has become or continued to be a controller,~~

~~partner or director after being given notice of objection under regulations made under section 36A, or under section 37.~~

~~—————(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 4 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 43, 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, policyholders or potential policyholders, or clients (in the case of an insurance intermediary); 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 43, 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.~~

~~—————(5A)——— Where the Commission makes a decision to revoke a licence, it may give notice of that decision when it is made, notwithstanding that the decision may not have effect when notice is given.~~

~~—————(6)——— In this section "**the Court**" means—~~

~~(a)——— where the licensee 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 licensee 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 licensee concerned, to revoke a licence, the Commission shall serve upon the licensee concerned, in accordance with the provisions of section 40, notice in writing of the decision.~~

Surrender of insurance manager's or insurance intermediary's licence.

10. (1) A licensed insurance manager or licensed insurance intermediary may surrender his licence by notice in writing served upon the Commission.

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

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

(4) The Commission may, on receipt of an application under subsection (3), ~~and subject to the provisions of section 41,~~ 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 43, an appeal can be brought or, if an appeal is brought within that period, before the appeal is ~~finally disposed of or withdrawn~~ determined.

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

(6) The Commission may, ~~subject to the provisions of section 41,~~ refuse its consent to the surrender of a licence -

- (a) if in the opinion of the Commission the licensee's liabilities in respect of his business as an insurance manager or (as the case may be) insurance intermediary have not been discharged or transferred;
- (b) if the Commission believes that the surrender would not be in the ~~best~~ interests of the public, ~~policyholders or potential policyholders, clients (in the case of an insurance intermediary)~~ or the reputation of the Bailiwick as a finance centre;
- (c) in the case of an insurance intermediary, if his name would

not, immediately after the surrender, comply with the requirements of section 2; or

- (d) in any case, if the name of the licensee would not, immediately after the surrender, comply with the requirements of section 3049 of the Enforcement Powers Law.

~~(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 licensee concerned, in accordance with the provisions of section 40, notice in writing of the decision.~~

(7) Upon the surrender of a licence no fee paid or payable by the licensee concerned pursuant to regulations under section 71 shall be refunded, remitted, reduced or waived.

PART III

GENERAL PROVISIONS AS TO INSURANCE MANAGERS & INSURANCE INTERMEDIARIES

Principles of conduct

Principles of conduct for licensed insurance managers and licensed insurance intermediaries.

10A. (1) A licensee must deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning it or its business, or the business in relation to which it is acting as licensee, which ought reasonably to be disclosed to the Commission.

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

Directions to licensees

~~Directions to licensed insurance managers and licensed insurance intermediaries~~Power to issue directions.

11. (1) The Commission may, ~~subject to the provisions of section 41~~ at any time, by notice in writing, give such directions to any person referred to in subsection (2) (the "directed person"), requiring him ~~the directed person to do or not to do any thing, as appear to the Commission to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise.~~

~~(a) when serving notice under section 9 upon a licensee that the Commission has decided to revoke his 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 licensee has served a notice under section 10 surrendering his licence (whether or not the Commission has consented to the surrender under section 10(5)); or~~

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

~~give the licensee such directions as appear to the Commission to be desirable in the interests of the public, policyholders and potential policyholders, clients (in the case of an insurance intermediary) and the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise.~~

~~_____ (2) A direction under this section may be given to -~~

~~(a) _____ a licensee,~~

~~(b) _____ subject to the provisions of subsection (5), a former licensee,~~

~~(c) _____ a person carrying on business regulated by this Law -~~

~~(i) _____ who is exempted by the provisions of this Law from~~

the requirement to be licensed hereunder, or

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

in respect of such business,

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

(i) a licensee, or

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

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

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

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

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

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

(24) Without prejudice to the generality of subsection (1), directions thereunder may -

(a) require the licensee-directed person to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of histhe directed person's business in a particular way~~;~~

(b) prohibit, restrict or impose limitations upon =

(i) the carrying on of business as an insurance manager or (as the case may be) as an insurance intermediary, and other business, the acceptance or repayment of client and policyholder assets and monies, the granting of credit or the making of investments,

(ii) the carrying on of business regulated by this Law, or any class or description of such business, in or from within any place, or any particular place,

outside the Bailiwick -

(A) by the directed person,

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

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

(c) prohibit the licensee-directed person from soliciting (whether at all or in any specified manner) business regulated by this Law and other business, either generally or from particular-specified persons or classes or descriptions of persons;

(d) prohibit the licensee-directed person from entering into any other transaction or class or description of transactions;

(e) require the removal of any director, controller, partner,

manager, employee or authorised insurance representative person who is the holder of a supervised role in respect of, or who is an officer, employee, auditor or actuary of, the directed person,

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

(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 manner and containing such information and particulars, as may be so specified,

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

(i) assets kept in the custody of a trustee, custodian, licensed fiduciary, licensed banking institution or other person pursuant to the direction shall not, so

long as the direction is in force, be removed from such custody or be made the subject of any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993^f), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission,

(ii) any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993), trust, assignment, lien, right of set-off or other dealing purportedly created, executed or entered into by the directed person in contravention of the direction shall be ineffective against any claim by any liquidator of that person,

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

(i) where the directed person is a licensee, and without

^f Order in Council No. III of 1993.

prejudice to paragraph (h), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensed fiduciary, licensed banking institution or person of any other class or description, in each case approved by the Commission, all assets, or all assets of any specified class or description, which -

(i) belong to the directed person, or

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

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

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

(j) require the directed person to provide evidence of -

(i) compliance with -

(A) any provision of this Law and the

regulatory Laws, or

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

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

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

(k) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, require that person to take all reasonable steps to procure the transfer of all or any of that person's clients or policyholders to another licensee acceptable to the Commission,

(l) require the directed person to prepare consolidated accounts (in addition to any accounts required to be

prepared by virtue of the provisions of this Law).

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

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

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

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

~~—————(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 licensee concerned notice in writing that it no longer proposes to revoke his licence; or~~

~~(b) the Commission's decision to revoke the licence is set aside on appeal under section 43.~~

~~_____ (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 licensee, under section 10(3), to withdraw the surrender of his licence; or~~

~~(b) in cases where the Commission decides not to allow the licensee, under section 10(3), to withdraw the surrender of his licence, if the Commission's decision is set aside on appeal under section 43.~~

~~_____ (5) A direction may be imposed on a former licensee only within a period of six years immediately following the date on which the former licensee ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of a majority of the members of the Commission.~~

~~_____ However, for the avoidance of doubt, a direction imposed on a former licensee within that six year period may, in accordance with subsection (6), remain in force after the expiration of that period.~~

~~_____ (6) A direction may be imposed on a person or entity which has at any time been or been deemed to be a directed person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is currently a directed person of that class or description, but only for a period of six years immediately~~

following the date on which that person or entity ceased to be or be deemed to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of a majority of the members of the Commission.

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

This subsection does not apply to a former licensee.

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

- (a) the occurrence of such date, time, event or circumstance as may be specified in it,
- (b) such prohibitions, restrictions or requirements as may be so specified are complied with, or
- (c) rescinded by the Commission, if earlier.

For the avoidance of doubt, a direction imposed on a licensee or other person or entity of a class or description referred to in subsection (2) may remain in force

after -

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

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

(58) A licensee-person who contravenes any provision of a direction under subsection (1) is guilty of an offence.

~~(6) A contravention by a licensee 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 41, vary or rescind any direction under subsection (1) by notice in writing served upon the licensee concerned.~~

(9) Where the directed person is a licensee, the contravention of a direction under this section -

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

of the Enforcement Powers Law), but

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

(10) In the event of failure by the directed person to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the directed person to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

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

(812) The Commission may ~~give public~~ publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction ~~under subsection (1)~~ and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do

so, the Commission shall have regard to the interests of the public, ~~policyholders and potential policyholders, clients (in the case of an insurance intermediary)~~ and the reputation of the Bailiwick as a finance centre.

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

~~(13) In this section the "appropriate Court" means -~~

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

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

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

~~(9) Where the Commission decides otherwise than with the agreement of the licensee concerned to impose, vary or rescind a direction under subsection (1), the Commission shall serve upon the licensee concerned, in accordance with the provisions of section 40, notice in writing of the decision setting out the terms of the direction in question.~~

Supervised roles

Supervised roles.

11A. (1) A person who, in relation to a body, is appointed as or otherwise becomes the holder of any such position, interest or role as the Committee may specify by regulation as being an approved supervised role for the purposes of this Law shall be deemed for those purposes to be the holder of an "approved supervised role" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 36.

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

(a) a director,

(b) a controller,

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

(d) a money laundering reporting officer,

(e) a money laundering compliance officer, or

(f) a compliance officer,

shall be deemed for the purposes of this Law to be the holder of a "vetted supervised

role" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 37.

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

(a) a significant shareholder,

(b) a nominated officer,

(c) an auditor,

(d) an authorised insurance representative, or

(e) an "other supervised manager", that is to say, a person appointed -

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

(ii) to any other role in order to enable the body to fulfil the requirements of paragraph 4 of Schedule 4 (business to be directed by at least two individuals), but not including a person who falls into any other category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection,

shall be deemed for the purposes of this Law to be the holder of a "notified supervised role" in respect of that body, and the appointment to or acquisition of the role shall be notified to the Commission in accordance with the provisions of section 38.

(4) The Committee may by regulation amend this section so as to add to, remove or vary the positions, interests or roles included in each category of supervised role set out in subsections (1), (2) and (3).

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

Publication of information as to licensees

List of, and information as to, licensed insurance managers and licensed insurance intermediaries.

12. ~~(1) The Commission shall~~

- ~~(a) — establish and maintain, in such form as the Commission may determine, a list of all insurance managers and insurance intermediaries who are for the time being licensed as such;~~
- ~~(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.~~

(1) The Commission shall establish and maintain, in such form as the Commission may determine, and cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of all insurance managers and insurance intermediaries who are for the time being licensees (“the list”).

(1A) 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.

(2) The list ~~maintained under subsection (1)~~ shall contain, in relation to each licensed insurance manager and licensed insurance intermediary -

- (a) the name of the licensed insurance manager or (as the case may be) of the licensed insurance intermediary;
- (b) the address or principal place of business in the Bailiwick of the licensed insurance manager or (as the case may be) of the licensed insurance intermediary;
- (c) in the case of an insurance manager licensed to act as such in or from within the Bailiwick only in respect of a specified insurer or insurers, the insurer or insurers so specified;

~~(d) unless the Commission determines otherwise, the fact of any conditions of the licence or directions restricting the acceptance of new business; and~~

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

~~(i) any conditions imposed in respect of the licence,~~

~~(ii) any directions given to the licensed insurance manager or (as the case may be) the licensed insurance intermediary, or~~

(iii) any enforcement requirements imposed on the licensed insurance manager or (as the case may be) the licensed insurance intermediary or any other person in connection with the licence, and

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

(3) If at any time it appears to the Commission -

(a) whether in consequence of -

(i) ~~any grant of a licence under section 4 or any suspension, revocation or surrender of a licence under section 8 or 9~~ any grant, suspension, revocation, surrender or expiry of a licence; or

(ii) any change in relation to a licensed insurance manager or licensed insurance intermediary; 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.

~~———— (4) —…… [repealed]~~

~~———— (5) —…… [repealed]~~

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

~~(a) — a particular insurance manager or insurance intermediary has ceased to be licensed, whether by virtue of the revocation, surrender or expiry of the licence or otherwise;~~

~~(b) — a particular person—~~

~~(i) — is not licensed or has not been licensed as an insurance manager or insurance intermediary; 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, policyholders and potential policyholders, clients (in the case of an insurance intermediary) and the reputation of the Bailiwick as a finance centre.~~

~~———— (4) — The Commission shall publish the fact that a particular insurance manager or insurance intermediary has ceased to hold a licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise, or has had its licence suspended.~~

(5) The Commission may also publish the fact that a particular person has been granted or refused a licence or that a particular person does not hold or has not held a licence.

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

General requirements for insurance managers

Insurance managers to inform Commission of insurers for which they act.

13. (1) A licensed insurance manager shall -
- (a) within a period of six months beginning on the close of each financial year (or such additional time as the Commission may in any particular case allow), and/or at such other times or intervals and in respect of such other periods as may be prescribed by rules of the Commission, furnish the Commission with -
 - (i) the names;
 - (ii) the addresses or principal places of business; and
 - (iii) as respects companies and other legal persons, the

places of incorporation;

of all insurers for which he has, at any time during the financial year concerned or other period so prescribed, acted on a continuing basis, whether as an insurance manager or by providing any insurance advice or consultancy services or any administrative or secretarial services; and

(b) whenever required to do so by the Commission by notice in writing, furnish the Commission with -

(i) the names;

(ii) the addresses or principal places of business; and

(iii) as respects companies and other legal persons, the places of incorporation;

of all insurers for which he acts in any of the capacities specified in paragraph (a) at the date of the service of the notice, and of all insurers for which he has so acted at any time during the 12 months immediately preceding that date or such other period as the notice may specify.

(2) When furnishing any information required to be furnished by or

under subsection (1) a licensed insurance manager shall differentiate between those insurers which are licensed insurers and those which are not (including, without limitation, those carrying on business in such circumstances as not to require licensing by virtue of section 5 of the Insurance Business (~~Bailiwick of Guernsey~~) Law, 2002).

(3) A person who without reasonable excuse contravenes any provision of, or any requirement imposed under, subsection (1) or (2) is guilty of an offence.

Address for service.

14. Every licensed insurance manager shall furnish the Commission with an address in Guernsey (or, if the Commission agrees in writing in any particular case, in Alderney or Sark) which shall be his address for service of any document [under the provisions of or](#) for the purposes of this Law; and no change to that address shall be effective until notified to, and acknowledged in writing by, the Commission.

General requirements for insurance intermediaries

Insurance representatives to be authorised.

15. (1) It is the duty -
- (a) of every licensed insurance intermediary;
 - (b) of every licensed insurer acting as an insurance intermediary in relation to the ~~general~~ public in the Bailiwick; and

(c) of every licensed insurance manager who deals with the ~~general~~ public in the Bailiwick,

to authorise one or more insurance representatives to act on his behalf in accordance with this section (and an insurance representative who is so authorised is an “authorised insurance representative” for the purposes of this Law):

PROVIDED THAT an individual who is a licensed insurance intermediary, or a licensed insurance manager falling within paragraph (c), shall be deemed to be an authorised insurance representative of that insurance intermediary or insurance manager for the purposes of this Law without having to authorise himself in that behalf.

(2) The effect of an authorisation issued in accordance with this section is that, for so long as it remains in force, and thereafter in relation to events occurring whilst it remained in force, the actions and conduct as an insurance representative of the person to whom it is issued when acting or purporting to act under it are deemed for the purposes of this Law (notwithstanding that the person issuing the authorisation may be a company or other legal person incapable in fact of such actions and conduct) to be the actions and conduct of the person issuing it; and that person is accordingly obliged to take responsibility under this Law for all such actions and conduct.

(3) An authorisation in accordance with this section -

- (a) must be in writing and must state -
 - (i) the name of the authorised insurance representative;
 - (ii) the name of its issuer;
 - (iii) whether the authorisation covers domestic business;
 - (iv) whether the authorisation is for general business, long term business or both;
 - (v) whether the authorisation is restricted to stated classes of general business and/or long term business;
- (b) must state that its issuer is responsible for the actions and conduct of the authorised insurance representative concerned when acting or purporting to act under it;
- (c) must be notified to the Commission in such manner as the Commission may from time to time require;
- (d) may be issued to an insurance representative to act on behalf of its issuer either under a contract of employment

or under a contract of agency;

(e) may be revoked in writing by its issuer at any time, provided that its revocation shall not affect the continuing responsibility of its issuer as set out in subsection (2), and shall not be of any effect for the purposes of this Law unless and until -

(i) the revocation is notified to the Commission in such manner as the Commission may from time to time require; and

(ii) its issuer has taken all such reasonable measures as the Commission may specify to bring the revocation to the attention of people likely to be affected, and to recover the original and all copies of the authorisation and of any other document which might reasonably be understood to imply that the person concerned is authorised to act as an insurance representative on behalf of its issuer.

(4) It is the duty of licensed insurance intermediaries, licensed insurers falling within subsection (1)(b) and licensed insurance managers falling within subsection (1)(c) (and not the duty of the Commission) to be satisfied -

(a) before issuing an authorisation in accordance with this

section, that the person thereby authorised is (having regard to the ~~provisions of Schedule 4 applicable~~ [minimum criteria for licensing](#)) a fit and proper person to be so authorised; and

- (b) at all times whilst such an authorisation is in force, that the person authorised by it remains (having regard to the ~~provisions of Schedule 4 applicable~~ [minimum criteria for licensing](#)) a fit and proper person to remain so authorised;

and in discharging those duties licensed insurance intermediaries, licensed insurers falling within subsection (1)(b) and licensed insurance managers falling within subsection (1)(c) must have particular regard to any Conduct of Business Rules and codes ~~of conduct~~ for the time being in force.

Advice, etc. only through authorised insurance representatives.

16. (1) An individual shall not, by way of business or in the course of employment, advise clients or arrange contracts of insurance unless that individual is an authorised insurance representative, that is to say, an insurance representative for whose actions and conduct, in the course of his business or employment as such, a licensed insurance intermediary, licensed insurer or licensed insurance manager is obliged to take responsibility under this Law.

(2) Subsection (1) does not apply in the case of an individual who is, or is employed by -

- (a) a licensed insurer or a licensed insurance manager, and is not dealing with the ~~general~~ public in the Bailiwick; or
- (b) a person whose business as an insurance intermediary is exempt from the requirement to be licensed by virtue of any regulations made under section 2(4).

(3) A licensed insurance intermediary, licensed insurer or licensed insurance manager shall not advise clients, or arrange or enter into contracts of insurance, otherwise than through an authorised insurance representative.

(4) A licensed insurance intermediary, licensed insurer or licensed insurance manager does not contravene subsection (3) merely by -

- (a) arranging or entering into a contract of insurance through a person outside the Bailiwick who is not acting under a contract of agency or employment with that intermediary, insurer or manager;
- (b) in the case of a licensed insurer or licensed insurance manager, entering into a contract of insurance with a person who is not a member of the ~~general~~ public in the Bailiwick; or
- (c) issuing an advertisement described in section 1(2)(b) or 2(3)(b).

- (5) A person shall not -
- (a) profess to be an authorised insurance representative; or
 - (b) use a description (whether in English or any other language) which might reasonably be understood to imply that that person is an authorised insurance representative,

unless that person is in fact an authorised insurance representative in the circumstances in which he professes to be such or uses that description.

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

Insurance only to be placed with recognised insurers.

17. (1) An insurance intermediary or ~~licensed~~ insurance manager shall not arrange or attempt to arrange a contract of insurance between a client who is a member of the ~~general~~ public (in the Bailiwick or elsewhere) and any person other than a recognised insurer.

- (2) The following are recognised insurers -
- (a) any person who is licensed as an insurer under the Insurance Business ~~Law (Bailiwick of Guernsey) Law,~~

~~2002~~ 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 the Insurance Business ~~Law (Bailiwick of Guernsey) Law, 2002~~ by virtue of section 5 of that Law; and
- (c) any other insurer for the time being included (specifically or by description) in a list of recognised insurers maintained and published by the Commission.

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

Conduct of business rules ~~and codes of conduct~~

Conduct of Business Rules ~~and codes of conduct.~~

18. ~~(1) The Commission may from time to time issue—~~

~~(a) Conduct of Business Rules applicable to licensed insurance intermediaries;~~

~~(b) codes of conduct applicable to authorised insurance representatives; and~~

~~(c) — clients' monies regulations in respect of monies held by insurance intermediaries.~~

~~(1) — The Commission may make rules ("**Conduct of Business rules**") in relation to business regulated by this Law and the carrying on thereof by licensees and generally as to the conduct of, and the manner in which licensees conduct, or hold themselves out as conducting, their business.~~

~~————— (2) — Conduct of Business Rules may make provision—~~

~~(a) — as to the licensing, resources and duties of licensed insurance intermediaries;~~

~~(b) — as to their dealings and relationship with insurers, other insurance intermediaries, their authorised insurance representatives, clients and the Commission; and~~

~~(c) — generally as to the conduct of their business;~~

~~and may, without prejudice to the foregoing, impose on licensed insurance intermediaries obligations to ensure compliance by them and their authorised insurance representatives with codes of conduct.~~

~~————— (3) — Codes of conduct may address any aspect of dealings between insurance representatives (on the one hand), and clients, insurance intermediaries and~~

~~insurers (on the other hand).~~

(24) Except where the context otherwise requires, references ~~in this section and in sections 18AA and 18AB, and also references~~ in all Conduct of Business Rules and codes issued under ~~this Part the provisions~~ of this Law, to "licensed insurance intermediaries" extend also to ~~licensed insurers and~~ licensed insurance managers.

~~(5) 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 the Conduct of Business Rules or a code issued under this part of 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 Conduct of Business Rules or 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 Conduct of Business Rules or 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.~~

Particular matters that may be covered by Conduct of Business Rules.

18AA. Conduct of Business Rules may, without limitation -

- (a) set out general conditions applicable to ~~licensed insurance intermediaries~~ licensees (and accordingly make provision for matters in respect of which conditions may be imposed under section 7),

- (b) prescribe the manner in which ~~licensed insurance intermediaries~~ licensees must conduct, govern, manage and operate their business, ~~(and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of client and policyholder assets, financial resources, the calculation of technical provisions and capital requirements);~~ ;
 - (i) corporate governance.

(ii) internal controls and reporting.

(iii) client and policyholder assets and monies, including, without limitation -

(A) the holding (whether on trust or on any other basis or in any other manner or capacity), management, payment, attribution, separation and safeguarding thereof, including the holding thereof on trust, and

(B) in the event of insolvency, liquidation, dissolution, winding up, cessation, deregistration, receivership, administration or administration management, the priorities and preferences to be accorded by law thereto.

(iv) the outsourcing of functions,

(v) the provision of particulars in respect of business regulated by this Law being carried on,

(vi) insurance cover of any class or description.

(vii) financial resources,

(viii) business assets,

(ix) technical provisions,

(x) capital and capital resources requirements,

(xi) funds and liquidity requirements, and

(xii) the calculation, maintenance and approval of anything described in the above subparagraphs,

(c) prohibit ~~licensed insurance intermediaries~~ licensees from carrying on, or holding themselves out as carrying on, business as an insurance intermediary or insurance manager -

(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 ~~him~~ 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 insurance intermediaries~~ licensees of any discretionary powers afforded to them by clients or policyholders,
- (e) require ~~licensed insurance intermediaries~~ licensees to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any business as an insurance intermediary or insurance manager, and specify the powers and duties of persons so employed,
- (f) control the relationship between ~~licensed insurance intermediaries~~ licensees and their servants and agents and, without limitation, require ~~licensed insurance intermediaries~~ licensees to impose and enforce restrictions on the activities carried on by their servants and agents, and enable or require information obtained in the course of carrying on any class or description of the business as an insurance intermediary or insurance manager of a licensee to be withheld from persons involved in carrying on any other class or description of the business of that licensee,

- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of business as an insurance intermediary or insurance manager,
- (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 insurance intermediaries licensees~~ 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, ~~and~~
- (l) require the public disclosure by ~~licensed insurance intermediaries licensees~~ 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 insurance intermediaries licensees,

(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_z

(m) make provision as to the dealings and relationship of licensees with -

(i) other licensees,

(ii) other persons carrying on business as an insurance intermediary or insurance manager,

- (iii) other persons holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
- (iv) clients and policyholders and potential clients and policyholders of persons described in subparagraphs (i) to (iii),
- (v) insurers,
- (vi) authorised insurance representatives, and
- (vii) the Commission,
- (n) impose on licensees obligations to ensure compliance by them, their authorised insurance representatives, servants and agents and other persons of a class or description prescribed by the rules with the provisions of this Law,
- (o) make provision otherwise as to the licensing, resources and duties of licensees, and
- (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, licences and other relevant documents, including (without limitation)

provision –

(i) prescribing the information to be furnished by an applicant for a relevant document, and the manner in which that information is to be verified,

(ii) prescribing the form and content of relevant documents,

(iii) as to the renewal of relevant documents,

(iv) prescribing minimum requirements (as to capital, solvency, management, staff, resources and any other matter referred to in paragraph (b)) to be attained by an applicant for a relevant document,

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

Making-etc and effect of contravention, of Conduct of Business Rules.

18AB. (1) Before making any Conduct of Business Rules-rules under the

provisions of this Law 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~~ the public or the reputation of the Bailiwick as a finance centre, publish proposals for the ~~R~~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 for such period as the Commission may determine, and shall consider any representations made to the Commission concerning those proposals.

(2) ~~Conduct of Business~~ Rules of the Commission under the provisions of this Law shall specify the provisions of this Law under which they are made ~~(and see section 62(7) for further provision as to their making and publication)~~.

(3) Without prejudice to any other provision of this Law or of any other enactment as to the consequences of any such contravention, a contravention by any person of any rule of the Commission under the provisions of this Law does not of itself render that person liable to any criminal proceedings, but -

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

(b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before which the

proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question.

Prohibition orders

Power to make prohibition orders.

~~18A. (1) If it appears to the Commission, having regard to the provisions of Schedule 4, that an individual is not a fit and proper person to perform functions as or on behalf of a licensee in relation to the business of an insurance manager or an insurance intermediary (as the case may be), 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 business as an insurance manager or an insurance intermediary (as the case may be);~~

~~(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 the business of an insurance manager or an~~

insurance intermediary (as the case may be), 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.

List of prohibition orders.

18B. — (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.~~

Right to make representations as to prohibition orders.

~~18C. (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.~~

Other miscellaneous restrictions and requirements

~~Notification of change of director, etc.~~

~~19. (1) — Subject to subsection (3), and without prejudice to any other provision of this Law or any condition of a licence, where any person has become or has ceased to be a director, controller, partner, manager or auditor of a licensee, the licensee shall give notice in writing to the Commission of the fact.~~

~~—————(2)—— A notice required to be given under subsection (1) shall be given within a period of 14 days immediately following the day on which the licensee becomes aware of the relevant fact.~~

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

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

Power to make ~~regulations~~ rules for procedures in respect of trigger events.

19A. (1) The Commission may by ~~regulation~~ rule make such provision as it sees fit in relation to the requirements and procedure in respect of trigger events which require –

- (a) the notification, or approval, of the Commission; and
- (b) remediation by a licensee.

(2) For the purposes of this section, a "trigger event" includes, but is not limited to –

- (a) a change in ~~a director, controller, partner, manager, auditor or authorised insurance representative~~ the holder of a supervised role in respect of, or auditor of, a licensee;
- (b) a change in the registered office of the licensee;
- (c) any material change in the business plan of the licensee;
- (d) any ~~breach of a provision in Schedule 4 (Minimum criteria for licensing)~~ non-fulfilment of the minimum criteria for licensing (whether in relation to the licensee or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the licensee);
- (e) the cancellation or invalidation of the professional indemnity insurance of the licensee; and
- (f) any criminal ~~litigation~~ prosecution or investigation, or civil proceedings, arbitration proceedings or any other claim, brought against the licensee or any holder of a supervised role in respect of, or officer or employee of, the licensee.

(3) A licensee who without reasonable excuse ~~fails to comply with a requirement imposed on him by~~ contravenes any provision of regulations-rules made under this section is guilty of an offence.

(4) The Commission may ~~by regulation~~rule under this section, with the approval of Her Majesty's Procureur, specify the maximum penalty ~~for~~ an offence under subsection (3) but that penalty shall not exceed the penalties set out in section 65(2).-

~~(a) upon conviction on indictment, a term of imprisonment of 2 years;~~

~~(b) upon summary conviction—~~

~~(i) a term of imprisonment of 6 months; or~~

~~(ii) a fine at level 5 on the uniform scale.~~

Annual return of licensee.

20. (1) A licensee shall, in respect of each financial year (and/or at such other times or intervals and in respect of such other periods as may be prescribed), 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~~rule require.-

(a) for the purposes of enabling the Commission to perform its functions,

(b) for the purposes of responding to the obligations of the

Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism,

(c) in the interests of -

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre.

(2) Regulations-Rules under subsection (1) may, without limitation, require the annual return to include or be accompanied by ~~such documents as the Commission sees fit,-~~

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

(b) a calculation of the licensee's capital resources required to be maintained in accordance with rules of the Commission under sections 18 to 18AB,

(c) a 12 month financial forecast,

(d) audited accounts,

(e) a copy of the auditors' management letter or confirmation

from the licensee that the auditors have confirmed that no auditors' management letter is required to be issued,

(f) a certificate signed by the prescribed person confirming -

(i) compliance throughout the period covered by the annual return with the capital resources requirements applicable to the licensee by virtue of rules of the Commission under sections 18 to 18AB,

(ii) compliance throughout the said period with any code issued under this Law,

(iia) without prejudice to subparagraphs (i) and (ii), compliance throughout the said period with the provisions of this Law, the appointed Laws and any other prescribed enactment,

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

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

- (g) the names of and other prescribed particulars in respect of the holders of supervised roles in respect of, or the officers or employees of, a licensee,
- (h) the number of staff employed,
- (i) the number of policyholders and clients, whether in total or whether in respect of different classes or descriptions,
- (j) the licensee's estimate of the value of assets held by it or on its behalf,
- (k) such other information and documents as may be prescribed or as the Commission may determine.

and where the Commission has, under section 7(1) or 11(4)(l), imposed a condition or direction (as the case may be) on a licensee requiring the preparation of consolidated accounts, then all the information and documents required by rules under subsection (1) to be included in or to accompany the licensee's annual return shall (except to the extent that rules under subsection (1) make provision to the contrary) be prepared and submitted on a consolidated basis.

(2A) Rules under subsection (1) may, without limitation, make provision in relation to –

- (a) the furnishing, keeping and obtaining, by persons of

prescribed descriptions, of information, documents and records of prescribed classes or descriptions,

(b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,

(c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,

(d) the provision of reports, in such form as may be prescribed or as the Commission may determine, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,

(e) the payment of any fees prescribed by regulations under section 71 in respect of the submission of annual returns,

(f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,

(g) the service of notices.

~~(h) the submission of a single or composite return for licensees who also hold a licence under any of the regulatory Laws.~~

~~(2B) In this section "prescribed" means prescribed by the rules.~~

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

Appointment of auditors.

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

~~(2) A licensee making an appointment under this section shall forthwith give the Commission written notice stating—~~

~~—————(a) the date of the appointment; and~~

~~(b) the name and qualification of the person appointed;~~

~~and Without prejudice to the provisions of section 38, if an appointment as auditor under this section comes to an end the licensee shall forthwith immediately give the Commission written notice and explanation of the fact, giving the name of the person~~

whose appointment has come to an end.

(3) Without prejudice to the provisions of ~~subsection (2)~~ [section 38](#), a licensee which is a company shall ~~forthwith~~ immediately give written notice and explanation to the Commission -

(a) if the licensee proposes to give special notice to its shareholders of a resolution removing an auditor before the expiration of [the auditor's](#) term of office; or

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

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

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

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

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

and a notice under paragraph (a) shall contain -

- (i) a statement to the effect that there are no circumstances connected with ~~his~~the auditor ceasing to be auditor which ~~he~~the auditor considers should be brought to the attention of the Commission; or
- (ii) if there are any such circumstances, a report of them.

(5) The provisions of subsections (3) and (4) apply in relation to a former licensee as they apply in relation to a licensee, but only, subject to the provisions of subsection (4B6), for a period of six years immediately following the date on which the former licensee ceased to hold a licence.

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

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

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

by reason of any fraud of –

(i) the former licensee, or

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

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

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

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

~~(7) The Commission may in its absolute discretion, in any particular case, and subject to such conditions as it may specify, by written notice waive all or any of the requirements of this section.~~

(9) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee, former licensee or auditor or class,

description or category of licensee, former licensee or auditor from the application of all or any of the requirements of subsection (1), (2), (3) or (4), either generally or in any particular case or class of case, and whether before or after the circumstance, event or occasion in question.

Annual accounts.

22. (1) A licensee shall keep, and have access to in the Bailiwick, accounting records which are sufficient to show and explain the licensee's transactions and which are such as to -

- (a) disclose with reasonable accuracy, at any time, the state of affairs of the licensee at that time; and
- (b) enable the licensee to prepare annual financial statements in accordance with this section.

(2) A licensee shall prepare from its accounting records, in respect of each financial year, and shall produce to the Commission within a period of six 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 licensee's state of affairs at the balance sheet or statement of financial position 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 the provisions of 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;
and
- (h) 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 licensee -

- (a) agree to the preparation of that licensee's accounts in a form other than a form specified by those provisions or requirements;
- (b) require that licensee 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 2) include references to any notes therein and any statements, reports and certificates annexed thereto.

(7A) In this section "accounting records" includes accounts, profit and loss accounts, statements of comprehensive income, statements of account, consolidated accounts, balance sheets, statements of financial position, reports, financial records and other associated records and documents.

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

Audit of accounts.

23. (1) The accounts required to be prepared by virtue of section 22 shall (in cases where an auditor is required to be appointed by virtue of the provisions of section 21) be audited by an auditor in accordance with the requirements of Schedule 2; 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 2.

Licensees to provide auditor's management letter and evidence of indemnity insurance.

24. A licensee shall, within a period of six months beginning on the close of each financial year of the licensee (or such additional time as the Commission may in any particular case allow), [and/or at such other times or intervals and in respect of such other periods as may be prescribed by rules of the Commission](#), provide the Commission with -

- (a) in cases where an auditor is required to be appointed by virtue of the provisions of section 21, a copy of the auditors' management letter or written confirmation that the auditors have confirmed that no auditors' management letter is required to be issued in respect of

that financial year [or other period so prescribed](#); and

- (b) such evidence of professional indemnity insurance cover in respect of the licensee as is required by the Commission under rules issued by the Commission from time to time [under sections 18 to 18AB](#) concerning the licensee's professional indemnity insurance cover.

Licensees to provide information on continuing business relationships.

25. (1) A licensee shall provide the Commission with such documents and information as the Commission may from time to time require in relation to any continuing business relationships that he has with his clients.

(2) For the purposes of this section a "**continuing business relationship**" is any relationship between the insurance manager or (as the case may be) the insurance intermediary and others designed to facilitate the carrying out of transactions between those parties on a frequent, habitual or regular basis.

(3) An insurance manager or insurance intermediary who without reasonable excuse contravenes any provision of, or any requirement imposed under, subsection (1) is guilty of an offence.

Notification of conditions etc. or regulatory penalties.

25A. (1) Where a licensee proposes to enter into a contract of professional indemnity insurance in respect of his activities as a licensee and –

- (a) his licence is or has been made subject to any condition or restriction by or under [the provisions of](#) this Law; or
- (b) ~~the licensee~~ is or has been made subject to any regulatory penalty by or under [the provisions of](#) this Law ~~, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987[§]~~, or any of the regulatory Laws;

he shall, either directly or through the broker with whom he has arranged the proposed contract (as the case may be), notify the insurer who will provide the professional indemnity insurance of any such condition, restriction or regulatory penalty.

(2) Where a licensee must notify an insurer under subsection (1), he shall also –

- (a) provide evidence to the Commission that he has given such notification; and
- (b) inform the Commission of any consequences that may flow from this notification.

~~§——Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).~~——

(3) A licensee who without reasonable excuse ~~fails to comply with a requirement imposed on him by or under~~ contravenes any provision of, or requirement imposed under, this section is guilty of an offence.

Notification of compliance.

25B. (1) Where a licensee has entered into a contract of professional indemnity insurance in respect of his activities as a licensee, he shall notify the Commission of –

(a) his compliance with –

- (i) all warranties in or under that contract; and
- (ii) any requirement of notification or disclosure to the insurer in or under that contract throughout the period of validity of the contract; and

(b) any –

- (i) actual or purported termination, avoidance or invalidation of the professional indemnity insurance; or
- (ii) rejection of a notification or claim on the professional indemnity insurance.

(2) A licensee who without reasonable excuse ~~fails to comply with a requirement imposed on him by or under~~ contravenes any provision of, or any requirement imposed under, this section is guilty of an offence.

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

26. (1) The annual return required to be prepared by virtue of section 20, the accounts required to be prepared by virtue of section 22 and (in cases where an auditor is required to be appointed by virtue of section 21) the report of the auditor made in pursuance of section 23, together with all accompanying information and documents, shall be deposited with the Commission within a period of six 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 or at such other times or intervals as the Commission may by rule prescribe.

(2) The Commission may, without prejudice to any other provision of this Law, specify the form of any particular document or of any class of documents required to be deposited with it under subsection (1) and the form and manner in which and means by which any document or class of documents must be deposited; 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 and manner and by the specified means.

(3) Without prejudice to the provisions of section 20(1) and subsection (1) of this section, where a licensee 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 licensee, modify the requirements of section 20 and of any ~~regulations~~rules thereunder in their application to that licensee.

(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 or otherwise non-compliant with the provisions of this Law in any respect the Commission may communicate with the licensee with a view to requiring the correction of any such inaccuracy and the making good of any such deficiency or non-compliance.

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

Other miscellaneous provisions applicable to licensees.

27. (1) A licensee shall not undertake business, whether as an insurance manager or (as the case may be) insurance intermediary, or otherwise, other than that which conforms, in all material respects, with its current business plan.

(2) Any proposed material changes in the information contained in a licensee'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.

(3) Subject to subsection (3A), a ~~A-Current~~ Personal Questionnaire

shall be lodged with the Commission by every licensee in respect of all persons who are of any of the following descriptions -

(a) a director of the licensee for the time being holding office;

(b) a controller of the licensee for the time being; and

(bb) the holder of a supervised role in respect of the licensee,
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 licensee from all or any requirements of subsection (3), either generally or in any particular case or class of case.

(4) A licensee shall comply with the provisions of this Law ~~(and any Ordinance, regulation or rule under it) and all applicable Conduct of Business Rules and codes issued from time to time under this Law~~; and any failure by a licensee 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 licensee's licence.

~~(5) Without prejudice to any other provision of this Law, a licensee shall, before effecting any change of any director, controller, partner, manager, 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 licensee from all or any of the requirements of this subsection, either generally or in any particular case or class of case.~~

~~—————(5A) Without prejudice to any other provision of this Law, a licensee shall notify the Commission of the change of any authorised insurance representative within 10 days of such change being made: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee from all or any of the requirements of this subsection, either generally or in any particular case or class of case.~~

~~—————(6) For the purposes of subsection (5), 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.~~

Notification of significant shareholding

Notification of acquisition of significant shareholding in licensee.

28. (1) A person who becomes a significant shareholder in relation to a licensee 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.

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

=

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

(b) such fee as may be prescribed by regulations under section 71;

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

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

(2) A person ("A") who fails to give notice in accordance with subsection (1) is guilty of an offence unless he~~A~~ shows (for the avoidance of doubt, on a balance of probabilities) that he~~A~~ was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case ~~he shall be~~A is guilty of the offence if he~~A~~ fails to give such notice within a period of 14 days immediately following the day upon which ~~he becomes~~A became or ought reasonably to have become so aware.

Notification of additional or reduced voting power

Notification of acquisition of additional voting power.

28A. (1) Where a person, alone or with associates -

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

(b) becomes entitled to exercise, or control the exercise of, whether in a single transaction or by a series of transactions over whatever period of time -

(i) a further 5% or more of that voting power, or

(ii) any successive such percentage,

(an “additional controller holding”).

that person shall notify the Commission of the fact and obtain the Commission's written approval thereto.

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

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

(b) such fee as may be prescribed by regulations under section 71;

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

(3) The Commission may serve a notice refusing approval for the purposes of this section if it is not satisfied -

(a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to exercise, or control the exercise of, any voting power described in subsection (1) in respect of the licensee or (where the licensee is a company) any other company of which the licensee is a subsidiary,

(b) that the interests of policyholders or clients or potential policyholders or clients of the licensee would not in any other manner be threatened by that person becoming entitled to exercise, or control the exercise of, any such

voting power, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee as a person entitled to exercise, or control the exercise of, any such voting power -

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

(A) in relation to that licensee, or

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

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

(4) A notice refusing approval for the purposes of this section shall (without prejudice to the provisions of section 40) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

(5) For the purposes of subsection (1) 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 compliance by that person with the requirements of subsection (1) and any other requirements imposed under subsection (2) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice on the person concerned refusing its approval of the change.

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

(7) A person ("B") who fails to give notice in accordance with subsection (1) is guilty of an offence unless B shows (for the avoidance of doubt, on a balance of probabilities) that B was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case B is guilty of the offence if B fails to give such notice within a period of 14 days immediately following the day upon which B became or ought reasonably to have become so aware.

Notification of reduction of voting power.

28B. (1) Where a person, alone or with associates -

(a) is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of a body which is a licensee or (where that

body is a company) of any other company of which that
body is a subsidiary, and

(b) ceases to be entitled to exercise, or control the exercise of,
whether in a single transaction or by a series of
transactions over whatever period of time -

(i) 5% or more of that voting power, or

(ii) any successive such percentage,

(a “**reduced controller holding**”).

that person shall notify the Commission of the fact.

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

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

(b) such fee as may be prescribed by regulations under section
71;

and following receipt of such notification from any person, the Commission may by
notice in writing require that person to furnish such additional information or

documents as the Commission may require.

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

(4) A person ("C") who fails to give notice in accordance with subsection (1) is guilty of an offence unless C shows (for the avoidance of doubt, on a balance of probabilities) that C was not aware that the facts or circumstances were such as to require the giving of such notice; but in such a case C is guilty of the offence if C fails to give such notice within a period of 14 days immediately following the day upon which C became or ought reasonably to have become so aware.

Winding up of insurance intermediaries

Winding up of insurance intermediaries which are Guernsey or Alderney companies.

~~29. (1) If, after investigation, it appears to the Commission that a licensed insurance intermediary—~~

~~(a) has breached a condition of its licence; or~~

~~(b) is contravening, has contravened or is likely to contravene any provision of this Law (or any Ordinance, regulation or rule under it) or of any Conduct of Business Rules or code~~

~~(including, without limitation, a provision requiring the insurance intermediary to ensure that its authorised insurance representatives comply with any such provision);~~

~~the Commission may apply for the winding up of the licensed insurance intermediary—~~

~~(i) in accordance with the Companies (Guernsey) Law, 1994, where the licensee is a Guernsey company; or~~

~~(ii) in accordance with the Companies (Alderney) Law, 1994, where the licensee is an Alderney company;~~

~~on the ground that it has persistently, wilfully or seriously contravened any such provision or breached any condition of its licence.~~

~~(2) Subsection (1) is in addition to and not in derogation from the provisions of the Companies (Guernsey) Law, 1994 and the Companies (Alderney) Law, 1994 and any other provision of law relating to winding up.~~

PART IV

BUSINESS DESCRIPTIONS AND NAMES

Restrictions on use of certain descriptions and names.

~~30. (1) No person other than~~

~~(a) a licensed insurance manager or a licensed insurance intermediary; or~~

~~(b) a person who has first obtained the permission of the Commission in that behalf under section 31 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 acting in or from within the Bailiwick as an insurance manager or (as the case may be) that he is carrying on business as an insurance intermediary in or from within the Bailiwick; or~~

~~(B) that he is a licensed insurance manager or (as the case may be) a licensed insurance intermediary; 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 acting in or from within the Bailiwick as an insurance manager or (as the case may be) that he is carrying on business as an insurance intermediary in or from within the Bailiwick; or~~

~~(B) — that he is a licensed insurance manager or (as the case may be) a licensed insurance intermediary.~~

~~————— (2) — No person shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed insurance manager or a licensed insurance intermediary to act in or from within the Bailiwick as an insurance manager or (as the case may be) to carry on business as an insurance intermediary in or from within the Bailiwick.~~

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

~~————— (4) — The provisions of this section are in addition to and not in derogation from the provisions of section 2(1).~~

~~Permission to use certain descriptions or names.~~

~~31. (1) A person wishing to obtain permission for the purposes of section 2, 30, 34 or 35 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 41~~

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

~~(ii) refuse the application.~~

~~(4) The Commission may, subject to the provisions of section 41, revoke a permission granted under this section or impose, vary or rescind any condition in respect of any such permission.~~

~~—————(5) — Where the Commission decides—~~

~~—————(a) — to refuse an application made under subsection (1);~~

~~(b) — to revoke a permission granted under this section; or~~

~~(c) — to impose, vary or rescind any condition in respect of any
such permission;~~

~~it shall give written notice of that decision to the applicant 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 43.~~

~~**Commission may object to certain names.**~~

~~—————32. —(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 41, by notice in writing served upon it, object to that name.~~

~~—————(2) — Where a licensee 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 41, within a period of 56 days immediately following the receipt by it of such notice, by notice in writing served upon the licensee, object to the~~

proposed name.

~~_____ (3) — The Commission may also, subject to the provisions of section 41, 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 41, by notice in writing served upon that person, object to that name.~~

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

~~—————(8)—— A notice of objection under this section shall state the grounds of the Commission's objection and give particulars of the right of appeal conferred by section 43.~~

Offences in relation to objections to names.

~~33.——(1)—— Where the Commission gives notice objecting to a name under section 32, 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 notice of objection—~~

~~(a)—— under section 32(1), (2) or (3), may take immediate effect;~~

~~(b) — under section 32(6), takes effect at the end of the period within which, under section 43, an appeal can be brought or, if an appeal is brought within that period, when the appeal is finally disposed of or withdrawn.~~

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

Incorporation and change of name of companies.

~~34. — (1) — Without prejudice to the provisions of any other enactment—~~

~~(a) — no application under the Companies (Guernsey) Law, 1994^h or the Companies (Alderney) Law, 1994ⁱ 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 "adviser", "broker" or "consultant" in combination with the word "insurance" or "assurance", or any cognate expressions, 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 31 and any conditions subject to which that permission was granted have, so far as~~

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

ⁱ — Order in Council No. XXXIV of 1994.

~~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 "adviser", "broker" or "consultant" in combination with the word "insurance" or "assurance", or any cognate expressions, shall be granted unless the applicant establishes that –~~

~~(i) it is a licensed insurance intermediary; or~~

~~(ii) it has obtained the permission of the Commission in that behalf under section 31 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 32 is in force in respect of the proposed name.~~

~~—————(2)—— The Commission may by regulation amend subsection (1) and section 2(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 thereby regulated.~~

~~Applications by Commission for change of company name.~~

~~35. (1) Where a Guernsey company or an Alderney company other than~~

~~—————(a)—— a licensee; or~~

~~(b)—— a company which has first obtained the permission of the Commission in that behalf under section 31 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—~~

~~(i)—— it is a licensed insurance manager or a licensed insurance intermediary; or~~

~~(ii)—— it is acting in or from within the Bailiwick as an insurance manager or (as the case may be) is carrying on business as an insurance intermediary in or from within the Bailiwick;~~

~~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 licensee; or~~

~~(b) a company which has first obtained the permission of the Commission in that behalf under section 31 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—~~

~~(i) is a licensed insurance manager or a licensed insurance intermediary; or~~

~~(ii) is acting in or from within the Bailiwick as an insurance manager or (as the case may be) is carrying on business as an insurance intermediary~~

~~in or from within the Bailiwick;~~

~~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.~~

PART V

OBJECTIONS TO CONTROLLERS

NOTIFICATION OF HOLDING OF APPROVED AND VETTED

SUPERVISED ROLES, ETC

Notification of and objection to controllers, etc.

~~36. (1) No person shall become a controller of a licensee which is a~~

~~company, or a partner in a licensee which is a partnership, or a director of a licensee 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 41, 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 licensee;~~

~~(b) that the interests of the public, policyholders and potential policyholders and clients (in the case of an insurance intermediary), 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 licensee as such a controller, partner or director—~~

~~(i) the criteria of Schedule 4 would continue to be fulfilled—~~

~~(A) in relation to that licensee; and~~

~~(B) in relation to any person who is or is to be a director, controller, partner, manager,~~

~~authorised insurance representative or
employee of that licensee; or~~

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

~~(4) A notice of objection under this section shall—~~

~~(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
43.~~

**Power to make regulations for procedures in respect of notification and objection to
controllers, etc.**

~~36A.—The Commission may by regulation make such provision as it sees fit in
relation to the—~~

~~(a) requirements and procedure by which a person may become—~~

~~(i) a controller of a licensee which is a company;~~

~~(ii) a partner in a licensee which is a partnership; or~~

~~(iii) a director of a licensee which is an unincorporated body;~~

~~and~~

~~(b) procedure by which the Commission may object to a person~~

~~becoming a person listed in paragraph (a).~~

~~Objection to existing controllers, etc.~~

~~37. (1) Where in the opinion of the Commission a person who is—~~

~~(a) a controller of a licensee which is a company;~~

~~(b) a partner in a licensee which is a partnership; or~~

~~(c) a director of a licensee 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 41, 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~~

~~43.~~

Contraventions by controllers, etc.

~~38. — A person who —~~

~~(a) — becomes a controller, partner or director in contravention of regulations made under section 36A; or~~

~~(b) — becomes or continues to be a controller, partner or director after a notice of objection has been served on him under regulations made under section 36A or under 37;~~

~~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.

~~39. — (1) — The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of regulations made under section 36A or has become or continued to be such a controller after a notice of objection has been served on him under regulations made under section 36A, or under section 37.~~

~~— (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 licensee, 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 regulations made under section 36A or under 37—~~

~~(a) — until the end of the period within which, under section 43, 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 licensee 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 licensee; and~~

~~(b) in cases where the person in question became a controller of the relevant description of a licensee 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 licensee.~~

~~(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensee 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 43; 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.~~

Notification of and objection to holders of approved supervised roles.

36. (1) A person ("A") shall not become the holder of an approved supervised role in respect of a licensee unless -

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

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

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

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

(b) such fee as may be prescribed by regulations under section 71;

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

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

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

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

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

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

(A) in relation to that licensee, and

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

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

(4) A notice of objection under this section shall (without prejudice to the provisions of section 40) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

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

Notification of and objection to holders of vetted supervised roles.

37. (1) A person ("B") shall not become the holder of a vetted supervised

role in respect of a licensee unless -

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

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

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

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

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

(b) such fee as may be prescribed by regulations under section 71;

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

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

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

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

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

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

(A) in relation to that licensee, and

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

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

(4) A notice of objection under this section shall (without prejudice to the provisions of section 40) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

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

Notification of change of holder of supervised role.

38. (1) Subject to the provisions of subsection (4), where any person becomes or ceases to be the holder of a supervised role in respect of a licensee, the

licensee shall give notice in writing to the Commission of the fact.

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

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

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

(b) such fee as may be prescribed by regulations under section 71;

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

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

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

Power to make regulations for procedures in respect of notification and objection to controllers, etc.

~~36A.—The Commission may by regulation make such provision as it sees fit in relation to the—~~

~~(a) the requirements and procedure by which a person may become~~

~~—~~

~~(i) a controller of a licensee which is a company;~~

~~(ii) a partner in a licensee which is a partnership; or~~

~~(iii) a director of a licensee which is an unincorporated body;~~

~~and~~

~~(b) the procedure by which the Commission may object to a person becoming a person listed in paragraph (a).~~

PART VI
SUPPLEMENTARY MATTERS

Notice of decisions

Notice of decisions of Commissions' decision to refuse licence, etc.

40. (1) ~~Notice of a decision of the Commission required to be served under section 4(5), 7(10), 8(5), 9(7), 10(7) or 11(9) -~~ Where the Commission (having taken into account, where appropriate, any representations made by the person concerned) makes a decision in respect of which a right of appeal is conferred by section 43, notice in writing of the decision -

(a) shall be served by the Commission on the person concerned,

(ab) shall state the terms of and the grounds of the ~~Commission's~~ decision; ~~and~~

(c) shall set out particulars of or be accompanied by -

(i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or

(ii) any notice to be served.

(d) shall contain or be accompanied by, in accordance with the provisions of section 42(1), a statement of the reasons for the decision (but subject to the provisions of section 42(2)), and

(be) shall give particulars of the right of appeal conferred by section 43;

and "the person concerned" means the person by whom, in the opinion of the Commission, the right of appeal is exercisable.

(2) Where -

(a) a ground for a decision mentioned in section 4(5), 7(10), 8(5), 9(7), 10(7) or 11(9) notice of which is required to be served under subsection (1) is that any criterion of paragraph 3 of Schedule 4 is of the minimum criteria for licensing are not or ~~has~~have 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 11(1), requires the removal or replacement of any person as a director, controller, partner, manager, employee, authorised insurance representative or auditor an order, restriction, condition, obligation, requirement, duty,

direction or arrangement requires the removal or replacement of any person as an officer, employee, auditor or actuary, or holder of a supervised role;

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 43.

Representations and appeals

Representations concerning proposed decisions of Commission.

41. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 43, other than a decision to serve a notice under section 28A, 37 or 45(1), (2), (3) or (7) or 47(1), the procedure prescribed in this section shall be followed.

(2) The Commission shall serve on the person concerned by whom, in the opinion of the Commission, the right of appeal would be exercisable if the Commission were to make the proposed decision (the "person concerned") a notice in writing -

- (a) stating that the Commission is proposing to take the decision;
- (b) stating the terms of and the grounds for the proposed decision;

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

(i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or

(ii) any notice proposed to be served,

(d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine; ~~and~~

(e) containing or accompanied by, in accordance with the provisions of section 42(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 42(2)), and

- (fe) giving particulars of the right of appeal which would be exercisable under section 43 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 ~~criteria of paragraph 3 of Schedule 4 is of the minimum criteria for licensing are~~ 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, authorised insurance representative or auditor~~ order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee, auditor or actuary, or holder of a supervised role;

the Commission shall serve upon that person a copy of the notice mentioned in

subsection (2) (which copy may omit any matter which does not relate to that person) giving together with particulars of the right of appeal which would be exercisable under section 43 if the Commission were to take the proposed decision.

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

(5) The Commission may also, in performing its functions under the provisions of this Law or the regulatory Laws, and without limitation, have regard to -

(a) any representations made in response to a notice served under this section, or

(b) any failure or omission to make any such representations.

~~(56)~~ 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, ~~policyholders or potential policyholders, clients or potential clients (in the case of an insurance intermediary)~~ or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

Disclosure of reasons for decisions of Commission.

42. (1) ~~Where the Commission makes a decision in respect of which a right of appeal is conferred by section 43, 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.~~When the Commission serves notice on a person -

(a) under section 40(1) or (2) of a decision in respect of which a right of appeal is conferred by section 43, or

(b) under section 41(2) or (3) stating that the Commission is proposing to make such a decision,

the Commission shall, subject to the provisions of subsection (2), provide that person with a written statement of the reasons for the decision or proposed decision, as the case may be.

(2) Subsection (1) 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, whether in the~~ Bailiwick or elsewhere; or

(c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 43.

Appeals against decisions of Commission.

43. (1) A person ("A") aggrieved by a decision of the Commission -

(a) to refuse an application by himA for a licence;

~~(b) to revoke his licence;~~

~~(b)~~ (e) to impose (whether at the time of issue of the licence or subsequently), vary or rescind any condition in respect of hisA's licence;

~~(c) to refuse to vary or rescind any such condition,~~

(d) not to allow the surrender of hisA's licence to be withdrawn, or to refuse consent to the surrender of hisA's licence;

(e) to give himA directions under section 11, ~~39, 45(6)~~ or 61 or

to vary or rescind any direction so given;

~~(f) to refuse to vary or rescind any direction so given,~~

~~(g) to serve a notice refusing approval for the purposes of section 28A (notification of acquisition of additional voting power),~~

~~(f) to refuse his application under section 31(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;~~

~~(g) to serve a notice on him under section 32 objecting to a name;~~

~~(h) under section 36 (notification of approved supervised roles), to serve a notice of objection,~~

~~(i) under section 37 (notification of vetted supervised roles), to serve a notice of objection,~~

~~(j) to omit, pursuant to the provisions of section 42(2), any matter from a statement of reasons given to him provided pursuant to section 42(1);~~

~~(k)~~ to serve a notice on him under section 45(1), ~~(2), (3) or (7), 46(1) or (3) or 47(1)~~;

~~(l)~~ under section 45A, to appoint or require the appointment of a skilled person,

~~(j)~~ under section 18A, to make a prohibition order prohibiting the performance of any function, any specified function or any specified description of function;

~~(k)~~ to refuse to vary or revoke any such order under section 18A(5);

~~(m)~~ for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64 of the Enforcement Powers Law, or

~~(n)~~ being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;

may appeal to the Royal Court against the decision.

(2) Where -

(a) a ground for a decision described in subsection (1) is that any criterion of paragraph 3 of Schedule 4 of the minimum

criteria for licensing ~~is~~ are not or ~~has~~ have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as ~~a director, controller, partner, manager, employee, authorised insurance representative or auditor~~ an officer, employee, auditor or actuary, or holder of a supervised role;

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

~~(3) — A person aggrieved by a decision of the Commission to serve a notice of objection on him under regulations made under section 36A or under 37 may appeal to the Court against the decision.~~

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

- (a) the decision was ultra vires or there was some other error of law;
- (b) the decision was unreasonable;

- (c) the decision was made in bad faith;
- (d) there was a lack of proportionality; or
- (e) there was a material error as to the facts or as to the procedure.

(54) 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.

(65) The Commission may, where an appeal under this section has been instituted, apply to the [Royal](#) Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the [Royal](#) Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the [Royal](#) Court may direct); or

(b) make such other order as the [Royal](#) Court considers just;

and the provisions of this subsection are without prejudice to the inherent powers of the [Royal](#) Court or to the provisions of rule [36\(2\)52\(3\)](#) of the Royal Court Civil Rules, [20071989^f](#).

~~(76)~~ On an appeal under this section the [Royal](#) Court may -

(a) set the decision of the Commission aside and, if the [Royal](#) Court considers it appropriate to do so, remit the matter to the Commission with such directions as the [Royal](#) Court thinks fit; or

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

~~(87)~~ On an appeal under this section against a decision described in subsection (1)(c), ~~(d) (not to allow the surrender of a licence to be withdrawn), or~~ (e), ~~(i) or (ka)~~ the [Royal](#) Court may, upon the application of the appellant, and on such terms [and conditions](#) as the [Royal](#) Court thinks just, suspend or modify the operation of the ~~condition or direction decision~~ in question, ~~or the variation or rescission thereof,~~ pending the determination of the appeal.

[This subsection is without prejudice to section 41\(6\).](#)

^f [O.R.C. No. VII of 1989.](#)

(98) For the purposes of determining an appeal under this section against a decision described in subsection (1)(h) to omit, pursuant to the provisions of section 42(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and unless the Royal Court orders otherwise the information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing ~~him~~the appellant.

~~_____ (10) In this section "the Court" means—~~

~~(a) where the person described in subsection (1), (2) or (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;~~

~~_____ (e) _____ 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.~~

Appeals from Royal Court to Court of Appeal.

~~_____ 43A. (1) _____ An appeal from a decision of the Royal Court made under the provisions of this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.~~

~~_____ (2) _____ Section 21 of the Court of Appeal (Guernsey) Law, 1961^k ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.~~

Restriction on successive challenges.

~~_____ 43B. (1) _____ The Commission shall not (unless, in the opinion of the Commission, there are exceptional circumstances to justify doing so, the burden of proving which shall be on the applicant) proceed to consider an application by a person for the variation or revocation of an order or other decision to which this section applies where -~~

^k Ordres en Conseil Vol. XVIII, p. 315.

(a) the application is a further application, that is to say, an application which relates to a person in respect of whom a previous application for the variation or revocation of that order or other decision has been received by the Commission,

(b) in the opinion of the Commission, that further application discloses no significant change in any material circumstances concerning that person (the burden of proving that there has been such a significant change being on the applicant), and

(c) either -

(i) an appeal under section 43 relating to a previous such application in respect of that person has been commenced but not yet determined, or

(ii) within the period of 12 months immediately preceding receipt of that further application -

(A) a previous such application in respect of that person has been determined by the Commission, or

(B) an appeal under section 43 relating to a previous such application in respect of that person has been determined.

(2) The orders and other decisions to which this section applies are -

(a) a decision under section 7 to impose, vary or rescind any condition in respect of a licence,

(b) a decision to refuse to vary or rescind any such condition,

(c) a decision under section 11 or 61 to give any direction or to vary or rescind any direction so given,

(d) a decision to refuse to vary or rescind any direction so given,

(e) a decision to appoint or require the appointment of a skilled person under section 45A,

(f) a decision to serve notice of objection under section 36 (objection to holders of approved supervised role),

(g) a decision to serve notice of objection under section 37 (objection to holders of vetted supervised role).

(h) a decision to serve notice refusing approval for the purposes of section 28A (notification of acquisition of additional voting power), or

(i) an order or other decision of a class or description specified by regulations of the Committee.

~~Obtaining of information by Commission~~Power of Commission to obtain information and skilled persons, etc

Site visits.

44. ~~..... [repealed]~~

Persons to whom section 45 applies.

44A. (1) In section 45 a "relevant person" means a person or entity of any of the following classes or descriptions -

(a) a licensee,

(b) an applicant for a licence,

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

(d) a person carrying on any class or description of business regulated by this Law -

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

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

in respect of that class or description of such business,

(e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of business regulated by this Law, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

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

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

(h) an employee of, or a person who is or has at any time been directly or indirectly employed (whether or not under a

contract of employment) by, a relevant person specified in any other paragraph of this subsection,

(i) any person or entity -

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

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

but subject to the provisions of subsection (5),

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

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

(l) a special purpose vehicle or ancillary vehicle of a relevant

person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

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

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

(o) a person who performs any function for or on behalf of -

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

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

in relation to business regulated by this Law, including, without limitation, a person who is an auditor of a relevant person so specified, or

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

of the Committee.

(2) The provisions of section 45 apply in relation to a former licensee only for a period of six years immediately following the date on which that former licensee ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 45 are exercised in respect of a former licensee within that six year period, they may continue to be exercised in respect of that former licensee after the expiration of that period.

(3) The provisions of section 45 apply in relation to a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section as they apply in relation to a person or entity which is currently a relevant person of that class or description, but only -

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

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

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

However, for the avoidance of doubt, if the powers conferred by section 45 are exercised in respect of a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensee.

(4) For the avoidance of doubt, if the powers conferred by section 45 are exercised in respect of a licensee or other person or entity of a class or description of relevant person referred to in subsection (1), the powers may continue to be exercised in respect of them after -

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

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

(5) The powers conferred by section 45 may be exercised in relation to a person or entity referred to in subsection (1)(i), an associated party referred to in subsection (1)(j), a group entity referred to in subsection (1)(k), a special purpose vehicle or ancillary vehicle referred to in subsection (1)(l) or a company referred to in subsection

(1)(n) only -

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

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

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

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

Power to request and obtain information and documents.

~~45.—(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 immediately, 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 authorised insurance 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, policyholders or potential policyholders or clients (in the case of an insurance intermediary), 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 authorised insurance 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 64(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 43.~~

Power to require information and production of documents, etc.

45. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 44A require the relevant person to furnish the Commission or a person duly appointed by the Commission in that behalf (an "appointed person"), on any occasion or at times or intervals, and in respect of the periods, at the place, and in the form or manner, specified by the Commission or appointed person, with such information and documents, or information and documents of such class or description, as the Commission or (on producing, if required to do so, evidence of his or her authority) the appointed person may reasonably require for the purpose of the performance of the Commission's functions, being, if the Commission or the appointed person so requires, information and documents verified in such manner as the Commission or appointed person may reasonably specify.

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

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

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

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

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

(a) if the documents are produced –

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

(ii) to require –

(A) the person who was required to produce them, or

(B) where that person is a licensee, any other person who is a present or past holder of a supervised role in respect of, or is or was at any time an employee of, or directly or indirectly employed (whether or not under a contract of employment) by, that person.

to provide an explanation of any of them.

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

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

(6) A statement made by a person ("A") in response to a requirement imposed by or under this section -

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

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

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings

by or on behalf of A, or

(ii) in proceedings for -

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

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

(C) perjury, or

(D) perverting the course of justice.

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

(8) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it

is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

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

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

Appointment of skilled persons.

45A. (1) The Commission may, in relation to an inspected person within the meaning of subsection (4), if it considers it necessary or desirable to do so -

(a) in the interests of -

(i) the public, or

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

or

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

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

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

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

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

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

(3) A person appointed as a skilled person -

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

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

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

(a) a licensee,

(b) an applicant for a licence,

(c) a former licensee, but subject to the provisions of subsection (5),

(d) a person carrying on any class or description of business regulated by this Law -

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

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

in respect of that class or description of such business,

(e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of business regulated by this Law, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(f) an associated party of an inspected person specified in any

other paragraph of this subsection, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

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

(h) a person who performs any function for or on behalf of -

(i) an inspected person specified in any other paragraph of this subsection, or

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

in relation to business regulated by this Law, including, without limitation, a person who is an auditor of an inspected person so specified, or

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

(5) The provisions of this section apply in relation to a former licensee only for a period of six years immediately following the date on which it ceased to be

licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a former licensee within that six year period, they may continue to be exercised in respect of it after the expiration of that period.

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

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

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

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section within

that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensee.

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

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

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

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

(a) shall produce to a skilled person, at such time and place and in such form and manner as the skilled person may require, all documents in the custody or power of the inspected person or person so described and relating to the inspected person; and the skilled person may take copies of or extracts from any documents produced under this paragraph.

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

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

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

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

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

(c) a person appointed to make a report under section 5(6)(a) of the Regulation of Fiduciaries Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the

Protection of Investors Law, section 5(5) of the Banking Supervision Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of this Law in respect of such an inspected person.

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

(11) A person who without reasonable excuse -

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

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

is guilty of an offence.

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

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

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

proceedings except -

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

(ii) in proceedings for -

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

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

(C) perjury, or

(D) perverting the course of justice.

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

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

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

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

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

(17) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) may be recovered by the Commission from an inspected person as a civil debt except where and to the extent that the court is satisfied that -

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

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

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

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

~~**Investigations by inspectors.**~~

~~46. (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, the relevant person's clients or 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, authorised insurance representative, agent, banker, auditor, 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 3(5), 23 or 45(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 64(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 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 43.~~

~~—————(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
_____ insurance intermediary or authorised insurance manager
_____ 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
_____ business as an insurance intermediary in such
_____ circumstances as not to require registration by virtue of
_____ Part IVA 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 the business of an insurance manager or an
_____ insurance intermediary (as the case may be).~~

Investigation of suspected offences.

~~47. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1, 2, 7 or 30, 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~~

~~(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 43.~~

Power of Bailiff to grant warrant.

~~48. — (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 45 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 45; 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 45; 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 49.~~

~~(2) — If the Bailiff is satisfied by information on oath that the~~

~~Commission has appointed inspectors under section 46 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 49.~~

~~—————(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, 2, 7 or 30 and that—~~

~~(a) a person has failed to comply with any requirement of a notice under section 47(1) or any other requirement imposed by or under section 47;~~

~~(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 47(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 49.~~

~~————— (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.~~

~~49. — (1) — A warrant granted under section 48(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 45 was or could be served;~~

~~(ii) — upon which the documents to which the notice under section 45 relates are reasonably believed to be; or~~

~~(iii) — where no notice under section 45 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 45; or~~

~~(ii) where no notice under section 45 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 45;~~

~~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 45;~~

~~(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 48(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 46; or~~

~~(ii) upon which any documents to which the investigation under section 46 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 46, 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 46;~~

~~(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 48(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 47(1) was served;~~

~~(ii) — upon which there are reasonably believed to be the documents to which the notice under section 47(1) relates; or~~

~~(iii) — where no notice under section 47(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, 2, 7 or 30;~~

~~(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 48 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 48 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 48 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 64(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.~~

Legal professional privilege, liens and duties of confidentiality.

~~50. (1) Nothing in~~

~~(a) section 45, 46 or 47; or~~

~~(b) a warrant granted under section 48;~~

~~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 45, 46 or 47; or~~

~~(b) a warrant granted under section 48;~~

~~is without prejudice to his lien.~~

~~(3) A requirement imposed by or under~~

~~(a) section 45, 46 or 47; or~~

~~(b) a warrant granted under section 48;~~

~~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.~~

Falsification, etc, of documents during investigation.

51. A person ("A")-

(a) ~~..... [repealed]~~

(b) ~~upon whom a notice requirement is imposed by or under the provisions of section 45 or 45A, 46 or 47 has been served~~ or who knows or has reasonable grounds to suspect -

(~~ia~~) that such a ~~notice requirement~~ is likely to be ~~served~~ imposed on ~~him~~A, or

(~~ib~~) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 45 ~~or 45A, 46 or 47;~~

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

suspect -

~~(A) [repealed]~~

~~(Bi)~~ are or would be specified in such a ~~notice~~
requirement, or

~~(Cii)~~ are or would be relevant to such an inquiry
or investigation.

is guilty of an offence unless ~~heA~~ proves (for the avoidance of doubt, on a balance of probabilities) that ~~heA~~ 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.

Retention of documents.

51A. (1) The following persons or entities -

(a) a licensee,

(b) a person carrying on any class or description of business regulated by this Law -

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

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

in respect of that class or description of business,

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

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

(i) a licensee, or

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

as the case may be.

(2) The period of six years specified in subsection (1) may be extended by the Commission on any number of occasions for further periods each of

which may not exceed three years by notice in writing served on the person in question within the six year period or, as the case may be, within the current period of extension.

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

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

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

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

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

(c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1) must make in respect of the retention of documents and information in the event of their dissolution, winding up, cessation or deregistration, and

(d) the duties and obligations of persons who, pursuant to arrangements described in subsection (1), retain or have

possession or control of the documents and information of a person or entity of a class or description specified in any paragraph of subsection (1) which has been dissolved, wound up or deregistered or which has otherwise ceased.

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

Various enforcement powers of Commission

Repayment of monies from unlawful business:

~~52. (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 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.~~

Injunctions to restrain unlawful business, etc.

~~53. (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, 2, 7, 30 or 33;~~

~~(ii) a direction under section 11, 39 or 61; or~~

~~(iii) a regulation under section 61; 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, 1987¹; 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.

General provisions as to receivers.

~~54. (1) Where the Court has appointed a receiver under section 52 or 53, 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 52 or 53 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~~

¹—Ordres en Conseil Vol. XXX, p. 145.

~~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, [guidance](#), etc.

55. (1) The Commission, after consultation with -

(a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and [PerformanceFinance](#) 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 or the regulatory Laws as to the making of codes or guidance) issue such codes of practice and/or such guidance as the Commission thinks necessary -

(i) for the purpose of providing clarification or guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to policyholder and client protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by persons carrying on business regulated by this Law or any other persons to whom the code or guidance applies;

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

~~(2) A code issued under this Law may contain such transitional or savings provisions as appear to the Commission to be necessary or expedient.~~

(2) Without limitation, a code of practice or guidance under this section –

(a) may make provision in respect of any matter in respect of which rules may be made under sections 18 to 18AB, 20, 51A or 59, and

(b) may address any aspect of dealings between insurance representatives (on the one hand), and clients, insurance intermediaries, insurance managers and insurers (on the other hand).

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

(4) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of a provision of a code of practice or guidance issued under this Lawsection ~~shall~~ does not of itself render ~~him~~ that person 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;~~

~~performance of its functions,~~ may take the provision of the code ~~or guidance~~ and the contravention thereof into account in determining whether and in what manner to ~~exercise perform~~ those ~~powers functions~~; and

- (b) in any legal proceedings (criminal or otherwise), whether or not under ~~the provisions of or for the purposes of~~ this Law, the provision of the code ~~or guidance~~ 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.

Disclosure of information

Restrictions on disclosure of information.

56. (1) Subject to the provisions of section 57 -

- (a) no person who under ~~the provisions of~~ or for the purposes of this Law receives information relating to the business,

property 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.

57. Section 56 does not preclude -

- (a) the disclosure of -
 - (i) information which at the time of disclosure is or has already been made available to the public from other sources; or
 - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
- (b) the disclosure of information for the purpose of enabling

or assisting -

(i) the Commission, or

(ii) any body established by Ordinance under section 48 of the Banking Supervision Law or section 84 of the Insurance Business Law for the purposes of a scheme for the protection of depositors, investors, customers, clients or policyholders

to discharge-perform 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-perform its functions ~~conferred by or under this Law~~ or would otherwise be in the interest of the public or the reputation of the Bailiwick as a finance centre;

(d) where, in order to enable or assist it to discharge-perform 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 hethat person is properly informed as to the matters on which histe advice is sought;

- (e) the disclosure by the Commission of information in the interests of ~~clients or policyholders or in the public interest~~ the public or the reputation of the Bailiwick as a finance centre;
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority ~~in a country~~ outside the Bailiwick to exercise to perform its functions;
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under the provisions of this Law or any other enactment ~~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 the provisions of this Law or otherwise;

- (i) the disclosure of information in connection with any other proceedings arising out of this Law, enforcement action or sanction (civil, criminal or administrative) arising out of or under the provisions of this Law or any other enactment;
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of ~~his~~the professional duties by of -

(i) _____ an auditor of a licensee or former licensee, or

(ii) _____ ~~by~~ a person ~~nominated or approved for the purposes of~~ appointed to make a report under section 3(5)(a) or 23 or appointed under section 46 of this Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5) of the Banking Supervision Law or section 6(5)(a) or 36 of

the Insurance Business Law; or

(iii) a person appointed as a skilled person pursuant to the provisions of section 45A of this Law or the corresponding provisions of the regulatory Laws,

(k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of

(i) information obtained under the provisions of sections 45 to 50 or 45A of this Law or sections 7 to 13 of the Enforcement Powers Law, or

(ii) information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable;

(l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere;

(m) the disclosure of information to a person or entity responsible for a scheme for compensating clients or

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~~ perform its functions; and
 - (ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission; ~~or~~
- (n) the disclosure of information by the Commission for the purposes or in the circumstances described in -
- (i) ~~paragraph (a), (b), (d) or (f) of section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^m.~~
 - (ii) section 49 of the Protection of Investors Law,
 - (iii) section 45 of the Banking Supervision Law,

^m ~~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.~~

(iv) section 39 of the Regulation of Fiduciaries Law,

(v) section 80 of the Insurance Business Law, or

(vi) section 20 of the Enforcement Powers Law, or

(o) the disclosure of information for the purpose of enabling
or assisting -

(i) the Registrar of Companies,

(ii) the Alderney Registrar,

(iii) the Legal Aid Administrator (the office of which
was established under section 2 of the Legal Aid
(Bailiwick of Guernsey) Law, 2003),

(iv) the Office of the Financial Services Ombudsman
established by the Financial Services Ombudsman
(Bailiwick of Guernsey) Law, 2014,

(v) the Principal Ombudsman appointed under
section 4 of that Law,

(vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017),

(vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,

(viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017, or

(ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

Information supplied to Commission by relevant ~~overseas supervisory~~ authority.

58. (1) This section applies, to the exclusion of section 56, to information relating to the business, property or ~~other~~ affairs of any person provided to the Commission for the purposes of its functions ~~conferred by or under this Law~~, whether under the provisions of this Law or otherwise, 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 57(h), or

(b) in accordance with the provisions of [any of the appointed Laws](#) -

~~(A) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,~~

~~(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, or enactment or subordinate legislation~~ they 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.

Royal Court to take Commission's undertakings into account.

58A. The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business, property or ~~other~~ affairs of any person held, received or obtained by it under the provisions of or for the purposes of this Law or the regulatory Laws (whether pursuant to ~~the those~~ 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.

~~Communications to Commission by auditors, etc.~~

~~59. —(1) — In relation to an auditor of a licensee, this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of—~~

~~(a) — the licensee; or~~

~~(b) — any associated party thereof.~~

~~————(2) — In relation to a person appointed to make a report under section 3(5), 45(1)(b) or 46(1), 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 of a licensee; or~~

~~(b) — a person appointed to make a report under section 3(5), 45(1)(b) or 46(1);~~

~~to communicate to the Commission matters to which this section applies and which the auditor 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 business regulated by this Law; or~~

~~(ii) whether the Commission should exercise its powers under this Law in order to protect policyholders or clients from a significant risk of loss;~~

~~and no other duty to which the auditor 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 or person appointed to make a report under section 3(5), 45(1)(b) or 46(1) 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 of a former licensee as it applies in relation to the auditor of a licensee.~~

Communications by auditors, actuaries, etc, to Commission.

~~—————59. (1) No duty to which –~~

~~(a) an auditor or actuary, or~~

(b) a person appointed to make a report under section 3(5)(a) or 23 or as a skilled person pursuant to the provisions of section 45A,

is subject is contravened by reason of the auditor or actuary or that person communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(2) It is the duty of –

(a) an auditor or actuary, or

(b) a person appointed to make a report under section 3(5)(a) or 23 or as a skilled person pursuant to the provisions of section 45A,

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

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

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

(3) In relation to an auditor or actuary, this section applies to any matter of which the auditor or actuary becomes aware in the capacity of auditor or actuary and which relates to the business or affairs of –

(a) a licensee,

(b) an associated party of the licensee, or

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

(4) In relation to a person appointed to make a report under section 3(5)(a) or 23 or as a skilled person pursuant to the provisions of section 45A, this section applies to any matter of which that person becomes aware in the capacity of the person appointed to make the report or as a skilled person and which relates to the business or affairs of –

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

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

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

(5) If it appears to the Commission, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, that any accountants or class thereof or other persons of a class or description referred to in subsection (1)(a) or (b) are not subject to satisfactory rules or guidance made or issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1), the Commission may, after consultation as aforesaid in relation to the views of such bodies as appear to the Commission to represent the interests of accountants or other such persons and licensees, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

(6) 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, etc.

~~60. (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 licensee 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 or authorised insurance 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 or authorised insurance 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.~~

Power to request meetings with auditors, actuaries, etc.

~~————— 60. (1) The Commission may, whenever it thinks fit, and –~~

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

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

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, associated parties or officers of, or holders of supervised roles in respect of, a licensee or former licensee (the "client") at which the Commission may discuss any aspect of the operation, regulation or licensing of the client.

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

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

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

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

(3) Where a client or any person upon whom a notice is served under subsection (1) fails to co-operate with the Commission or any person acting for and on behalf of the Commission when performing or attempting to perform their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in

whatever form reasonably required, to any persons in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question or give any explanation, or otherwise), that failure may be taken into account by the Commission in performing its functions.

(4) For the avoidance of doubt, a meeting (and all ancillary, incidental and supplementary communications and proceedings) may be requested, arranged and conducted, and other requests and requirements may be made or imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

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

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

(i) that the notice has been given, or

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

(b) disclose, or cause or permit to be disclosed, to any person

(including the client) any information or matter which is likely to prejudice -

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

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

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

(A) that A took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by A and by any person under A's control, or

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

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

disclosure, or by any other act or omission, pursuant to such a request.

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

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

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

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

=

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

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

(b) to inform another person of -

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

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

is of no effect.

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

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

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

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

(ii) in proceedings for -

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

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

(C) perjury, or

(D) perverting the course of justice.

(11) The provisions of this section -

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

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

Advertising

Regulations as to advertisements.

61. (1) This section applies to advertisements -

- (a) in respect of the business of, or services provided by, insurance managers or insurance intermediaries or persons who profess to carry on such business; or
- (b) inviting persons -
 - (i) in the case of insurance managers, to enter into or to offer to enter into contracts with insurance managers to act as such; or
 - (ii) in the case of insurance intermediaries, to become or offer to become clients;

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 or becoming or offering to become clients shall be treated as an advertisement inviting them so to do.

(2) The Commission may by regulation make such provision as it thinks fit in respect of the issue, form and content of advertisements to which this section applies.

(3) Regulations under this section may, without prejudice to the generality of subsection (2) [or section 62](#) -

- (a) prohibit the issue of advertisements of any [class or](#)

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 advertisements to which this section applies;
- (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 business.

(4) If the Commission considers that -

- (a) any advertisement to which this section applies which has been issued or is proposed to be issued is misleading; or
- (b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of any regulation under this section;

the Commission may, ~~subject to the provisions of section 41,~~ give the advertiser a

direction under this section.

(5) A direction under this section may (without limitation) 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;
- (e) such ancillary, incidental and supplementary provision as the Commission may determine.

(6) A direction under this section -

(a) may have immediate effect;

~~(b) shall give particulars of the right of appeal conferred by section 43; and~~

~~(e)~~ if given orally, shall be confirmed by the Commission in writing not later than the next working business day.

(7) 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.

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

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

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

~~(c) rescinded by the Commission, if earlier.~~

~~(7B) In the event of failure by an advertiser to comply with a direction under this section, the Commission may, without prejudice to any other penalties,~~

powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the advertiser to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(7C) The Commission may publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the reputation of the Bailiwick as a finance centre.

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

(7D) In this section the "appropriate Court" means -

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

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

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

(8) Subject to subsection (9), a person who -

(a) issues or causes or permits to be issued an advertisement ~~in contravention of the issue of which is prohibited by~~ regulations under this section or who otherwise contravenes any provision of such regulations; or

(b) issues or causes or permits to be issued an advertisement ~~in contravention of the issue of which is prohibited by a~~ direction under this section or who otherwise contravenes any provision of such a direction;

is guilty of an offence.

(9) A person ("A") whose business it is to publish or arrange for the publication of advertisements ~~shall not be is not~~ guilty of an offence under subsection (8) if heA proves (for the avoidance of doubt, on a balance of probabilities) that -

(a) heA received the advertisement for publication in the ordinary course of hisA's business;

(b) the matters contained in the advertisement were not (wholly or in part) devised or selected by himA or by any

person under ~~his~~A's direction or control~~z~~ and

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

(10) For the purposes of this section and of any regulations or directions made under it -

- (a) an advertisement issued by any person on behalf of another person shall be treated as an advertisement issued by that other person~~z~~

- (b) an advertisement issued or caused or permitted 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 or permitted to be issued by ~~him~~that person on every day on which ~~he~~that person causes or permits it to be displayed or exhibited~~z~~ and

- (c) the issue of an advertisement containing an invitation -

- (i) to enter into or offer to enter into a contract with~~z~~
or

- (ii) to become a client or policyholder of or use services

provided by:

a person specified in the advertisement shall, unless the contrary is proved (for the avoidance of doubt, on a balance of probabilities), be presumed to have been caused by that person.

(11) The provisions of this section are in addition to and not in derogation from the provisions of section 11.

Approved assets.

Approved assets.

61A. For the purposes of this Law, approved assets will be those assets that the Commission may from time to time approve by regulation~~rule~~.

PART VII

GENERAL PROVISIONS

Ordinances and regulations, etc

Ordinances, regulations, rules, ~~and codes~~ and guidance, etc - general.

62. (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 Committee to prescribe by regulation anything which may be prescribed under this Law by Ordinance of the States.~~

(2) The States may by Ordinance empower -

(a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and

(b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (3)(b)) provision

amending this Law.

(3) Any Ordinance, regulation, rule, ~~or~~ code, guidance, principles, policies or instructions under the provisions of this Law -

(a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions as the case may be, hereunder;

(b) may contain such consequential, incidental, supplementary, savings, and transitional and other ancillary 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 and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (4));

(ii) provision amending or ~~modifying~~ applying exceptions, adaptations and modifications to any provision of this Law or any other enactment;

(iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(4) The power conferred by subsection (3)(b)(i) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power –

(a) to provide for offences to be triable only on indictment,

(b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

(c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(54) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, ~~or~~ code, guidance, principles, policies or instructions may be exercised -

(a) in relation to all cases to which the power extends, or in

relation to all those cases subject to specified exceptions,
or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it
is exercised -

(i) the full provision to which the power extends, or
any lesser provision (whether by way of exception
or otherwise);

(ii) the same provision for all cases, or different
provision for different cases or classes of cases, or
different provision for the same case or class of
case for different purposes;

(iii) any such provision either unconditionally or
subject to any prescribed conditions.

(56) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 80), consult the Policy and Performance Finance 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.

(67) The requirement imposed by subsection (56) to consult the Policy

and Performance Finance 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.~~

~~—————(8) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).~~

~~—————(9) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.~~

Regulations: consultation with Committees and Commission and laying before States.

63. Regulations made under the provisions of this Law ~~or under an Ordinance made under this Law~~

- (a) where made by the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Performance Finance Committee of the Chief Pleas of

Sark;

- (b) where made by the Committee or any other committee of the States of Guernsey, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and ~~Performance~~-Finance Committee of the Chief Pleas of Sark;
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

Regulations and rules are statutory instruments.

63A. For the avoidance of doubt, regulations and rules under the provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949ⁿ, the provisions of which shall apply accordingly.

Publication of regulations, rules, codes and guidance, etc.

ⁿ Recueil d'Ordonnances Tome X, p. 16.

63B. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication -

(a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions under the provisions of this Law, and

(b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any licences, consents, registrations, permissions and authorisations or otherwise in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the Commission may charge such fee -

(a) as may be prescribed by regulations under section 71, or

(b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

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

63C. (1) Subject to the provisions of subsection (2), the Commission may, on the application of a licensee or an applicant for a licence, by notice in writing served on the licensee or applicant adapt the requirements of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular business carried on by, the licensee or applicant.

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

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

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

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

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

Criminal Proceedings

Offences as to false or misleading information, etc.

~~64. (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 21 or a person appointed to make a report under section 3(5), 45(1)(b) or 46(1);~~

~~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, manager, partner or authorised insurance 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 —~~

~~(i) — to enter into or to offer to enter into any contract~~

~~with him whereby he will act as an insurance manager or any contract of insurance with an insurer; or~~

~~(ii) — to become or offer to become a client of his (in cases where he is an insurance intermediary);~~

~~is guilty of an offence.~~

Penalties.

65. (1) A person guilty of an offence under section ~~5(5), 7(5), 11(5), 13(3), 16(6), 19(4), 20(3), 21(57), 21(68), 22(8), 25(3), 26(5), 28(2), 28A(7), 28B(4), 33(3), 35(3)(a), 38(5), 58(7) or 61(8)(a) or 64(2)~~ is liable -

(a) on conviction on indictment, to a fine,

(b) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale.

(2) A person guilty of an offence under any other provision of this Law is 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~~6 months, or to a fine not exceeding twice
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^o and section 23 of the Reform (Sark) Law, 1951^p.~~

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsections (1)(b) and (2)(b) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by section 13 of the Government of Alderney Law, 2004^q and section 11 of the Reform (Sark) Law, 2008^r.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there shall be deemed to be a fresh offence on each day on which the display or exhibition continues.

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

^p ~~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.~~

^q Order in Council No. III of 2005; amended by No. XXII of 2010; and No. XI of 2012.

^r Order in Council No. V of 2008; amended by No. VI of 2008; No. XXVII of 2008; No. XIV of 2010; and No. XII of 2011.

Criminal proceedings against unincorporated bodies.

66. (1) Where an offence under the provisions of 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, without prejudice to subsection (3), be brought in the name of 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 72.~~

(2) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of 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.~~

(3) Where an offence under the provisions of this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any of the following persons -

(a) in the case of -

(i) a partnership, any partner or authorised insurance representative thereof, but subject to the provisions of subparagraph (ii).

(ii) a limited partnership without legal personality, any general partner or authorised insurance representative thereof.

(b) in the case of any other unincorporated body, any director or authorised insurance representative of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or

(c) any person purporting to act in any capacity described in paragraph (a) or (b).

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

Criminal liability of directors, etc.

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

(a) in the case of a company, any director, authorised insurance representative, controller, secretary or other similar officer thereof,

(b) in the case of a limited partnership with legal personality, any general partner or authorised insurance representative,

(c) in the case of a limited liability partnership, any member

or authorised insurance representative,

(d) in the case of a foundation, any foundation official or authorised insurance representative, or

(e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

68. In any proceedings for an offence under the provisions of this Law, ~~or any Ordinance, regulation or rule made under it,~~ it ~~shall be~~is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that ~~he~~the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by ~~himself~~the accused and by any person under ~~his control~~the control of the accused.

Jurisdiction.

69. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under the provisions of 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.

70. (1) 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 Her Majesty's Sheriff, the Registrar of Companies, the Alderney Greffier or the Prévôt of Sark, or

(de) 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 the provisions of this Law, ~~or any Ordinance, regulation or rule made under it~~, unless the thing is done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the

Human Rights (Bailiwick of Guernsey) Law, 2000^s.

Miscellaneous

Fees.

71. (1) ~~The States of Guernsey Policy and Resources Committee 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.~~ The Committee may by regulation prescribe fees to be payable to the Commission in connection with -

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

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

(2) The matters referred to in subsection (1) are -

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

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

^s Order in Council No. XIV of 2000; there are amendments not material to this Law.

~~notification as required by or under section 13, 15, 19, 21, 24, 25, 26 or 45~~ under the provisions of or for the purposes of this Law;

(c) the making of a request to the Commission -

(i) to allow the surrender of a licence to be withdrawn under section 10;

(ii) to consent to the surrender of a licence under section 10;

(iii) ~~under section 31(1) for permission for the purposes of section 2, 30, 34 or 35~~ any other provision of this Law;

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

(d) ~~such other matters as the States may by Ordinance prescribe for the purposes of this section~~ any other matters in respect of licensees or licences.

(3) Regulations under this section may also make such provision as

the Committee thinks fit in respect of the charging of interest in the event of default in the due payment of fees, charges, penalties and other amounts required to be paid to the Commission by or under the provisions of this Law.

~~—————(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) Regulations under this section may, without limitation -~~

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

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

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

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

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

~~(d) make provision for the payment of fees and interest by~~

instalments of such number and amounts and at such times as the regulations may specify or as the Commission may determine, and

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

(i) the amount of any interest, or

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

(45) Fees and interest 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 licensee by or in respect of whom, or in respect of whose licence or business, the fee or interest is payable; or

(iii) ~~the person or body~~ such other person or entity, or

class or description of person or entity, as may be specified by the regulations;

as a civil debt due to the Commission;

- (b) are not refundable may not (except to the extent that express provision to the contrary is made by or under the regulations or otherwise by or under the provisions of this Law) be refunded, remitted, reduced or waived;
- (c) shall, where appropriate, be proportioned in such manner as may be prescribed by the regulations.

(6) Without prejudice to the provisions of section 62(4), regulations under this section may make different provision in respect of -

- (a) different categories, classes or descriptions of licence or licensee or different categories, classes or descriptions of business regulated by this Law, or
- (b) the same categories, classes or descriptions of licence or licensee or the same category, class or description of business regulated by this Law, for different purposes or in respect of different circumstances.

(7) The provisions of this section are in addition to and not in

derogation from any other provision of this Law or the provisions of the regulatory Laws in respect of the payment of fees, interest and penalties.

Commission to have regard to guidance, etc, under FSC Law and other matters.

71A. (1) In performing its functions under the provisions of this Law -

(a) the Commission must (so far as relevant) -

(i) take into account any written guidance of a general character given by the Committee under section 7(1)(a) of the Financial Services Commission Law, and

(ii) act in accordance with any written directions of a general character given by the Committee under section 7(1)(b) of that Law,

concerning the policies to be followed by the Commission in relation to the supervision of finance business in the Bailiwick and the manner in which any function of the Commission is to be performed.

(b) the Commission may take into account (so far as relevant)

=

(i) any guidance notes or international standards

relating to business regulated by this Law and regulation issued by a body recognised by the Commission and identified in a code issued under the provisions of this Law,

(ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law or the Financial Services Commission Law,

(iii) any matter to which it may have regard under the provisions of this Law when performing the function in question, and

(iv) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action, duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction, order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any licensee, holder of a supervised role or other person or entity, and

(c) the Commission must have regard to the objectives of -

(i) protecting the public and the reputation of the Bailiwick as a finance centre,

(ii) ensuring that any relevant markets are fair, efficient and transparent, and

(iii) reducing risks to the financial system in the Bailiwick.

(2) The provisions of this section are in addition to and not in derogation from any other provision of this Law or any other enactment or rule of law relating to the functions of the Commission or the performance thereof and the matters which it must or may take into account.

Service of notices and documents.

72. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law ~~or any Ordinance, regulation or rule made under it~~ may be given to or served upon -

(a) an individual ("A"), by being delivered to himA, or by being left at, or sent by post ~~or transmitted~~ to, hisA's usual or last known place of abode or by being transmitted to A's relevant electronic address;

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post ~~or~~

~~transmitted to, that office, or by being transmitted to its relevant electronic address;~~

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post ~~or transmitted to, -~~

(i) its principal or last known principal place of business in the Bailiwick or,

(ii) if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick elsewhere;

or by being transmitted to its relevant electronic address,

(d) an unincorporated body, -

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, ~~manager-director~~ or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post ~~or transmitted to, -~~

(A) the body's principal or last known principal place of business in the Bailiwick, or,

(B) if there is no such place, its principal or last known principal place of business elsewhere;

or by being transmitted to its relevant electronic address,

(e) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post ~~or transmitted~~ to, its principal office in the Bailiwick, or by being transmitted to its electronic address;

(f) subject to the provisions of section 72A, 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 insurance manager, by being given to or served on ~~him~~ the licensed insurance manager in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, ~~his~~ the licensed insurance manager's address for service under section 14;

and in this section -

(i) ~~the expression~~ **"by post"** means by ~~registered post, recorded delivery service special delivery, recorded or signed for delivery~~ or ordinary letter post;

(ii) ~~"electronic address"~~ includes, without limitation, ~~an e-mail address and telecommunications address,~~

(iii) ~~"relevant electronic address"~~ means an electronic address -

(A) ~~with which, in the opinion of the Commission, the person concerned has a personal, business or other connection, and~~

(B) ~~a document transmitted to which is likely to come to the attention of the person concerned,~~

(~~iiiv~~) ~~the expression~~ **"transmitted"** means transmitted by electronic communication ~~(that is to say, in electronic form and by electronic means),~~ facsimile transmission or other similar means which produce ~~or enable the production of~~ a document

containing the text of the communication; ~~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 under the provisions of or for the purposes of this Law a person notifies the Commission of -

(a) an address for service within the Bailiwick ~~for the purposes of this Law, or~~

(b) an electronic address at which the service of documents may be effected on that person.

any document other than a summons to be given to or served upon ~~him~~ that person under those provisions or for those purposes may be given or served by being left at, or sent by post ~~or transmitted~~ to, that address in the Bailiwick or (as the case may be) by being transmitted to that electronic address.

(3) If service of a document under the provisions of or for the purposes of this Law cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of ~~subsections (1) to (4) this section~~ and of any other rule of law in relation to the service of documents, no document to be given to or served on the Committee or any other committee of the States of Guernsey or the Commission or its Chairman under the provisions of or for the purposes of this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under the provisions of or for the purposes of this Law is ~~an infant a minor~~ or person under guardianship, the ~~notice of~~ document shall be served on his or her guardian; and if there is no guardian, the Commission (or, with leave of the appropriate Court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for ~~the those~~ purposes ~~of this Law~~; and in this subsection the "the appropriate 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;~~

(a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,

(ab) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,

(b) the Royal Court, 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~~[‡] day which is not a business day.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

[‡] ~~Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.~~

(9) A document shall be deemed for the purposes of this Law to have been -

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

Documents to be submitted in electronic form and by electronic means.

72A. (1) Where a document is required or permitted to be submitted to the Commission by or under the provisions of or for the purposes of this Law, and except to the extent that express provision to the contrary is made by or under the provisions of this Law, the document -

(a) shall be in such electronic form, and shall be submitted by such electronic means and to such electronic address, as the Commission may require, whether in any particular case or class of cases or generally, or

(b) shall be in such non-electronic form, and shall be

submitted by such non-electronic means, as the Commission may in its absolute discretion require in any particular case or class of case.

(2) Where a document is required by or under the provisions of or for the purposes of this Law to be in such form as the Commission may require, the Commission may, in its absolute discretion and without limitation, require the document to be in such electronic form or non-electronic form as the Commission may require, whether in any particular case or class of cases or generally.

(3) This section applies, without limitation, to any, and to anything accompanying any, application, notice, return, validation, accounts, report, statement, consent, declaration, questionnaire, computation, plan or signature.

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000^u, the Electronic Transactions (Alderney) Law, 2001^v and the Electronic Transactions (Sark) Law, 2001^w.

Verification of information.

73. (1) The Commission may ~~direct~~ require that any information, statement or other document ~~or statement~~ provided to it in compliance or purported compliance with any ~~requirement~~ obligation imposed by or under ~~any provision of this~~

^u Order in Council No. VIII of 2000.

^v Order in Council No. XXVI of 2001.

^w Order in Council No. X of 2001.

~~Law or any Ordinance, regulation or rule under it the provisions of this Law~~ shall be verified in such manner as the Commission may reasonably specify; ~~and,~~

~~(2) any~~ Any information, ~~statement or other~~ document ~~or statement~~ which is not verified in accordance with a ~~direction given requirement made~~ under this section shall be deemed for the purposes of ~~that provision this Law~~ not to have been provided in accordance with the said ~~requirement obligation~~ and the said ~~requirement obligation~~ shall accordingly be deemed not to have been complied with.

Evidence.

74. (1) In any proceedings, a certificate signed on behalf of the Commission and certifying -

- (a) that a particular person is or is not a licensee or former licensee or was or was not a licensee ~~or former licensee~~ at a particular time;
- (b) 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.

75. (1) In this Law any expression in respect of which there is an entry in Schedule 3 shall have, except where the context requires otherwise, the meaning given by that entry; and related expressions shall be construed accordingly.

(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–Finance~~ Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by or under this Law on ~~the said Policy and Finance Committee or (as the case may be) the said General Purposes and Finance Committee~~ those committees.

(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* shall apply to the interpretation of this Law (and of any Ordinance, regulation or rule made under it)~~

* ~~Ordres en Conseil Vol. XIII, p. 355.~~

~~throughout the Bailiwick.~~

Effect on other Laws relating to insurance managers, etc.

76. 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 insurance intermediary, insurance manager or authorised insurance representative may be subject including, without limitation, any provision of or under -

- (a) the Companies (Guernsey) Law, ~~2008~~1994 ~~and the Companies (Enabling Provisions (Guernsey) Law, 1996^y;~~
- (b) the Companies (Alderney) Law, 1994;
- (c) the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Laws, 1936 to ~~1983^z~~1989;
- (d) the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950^{aa};
- (e) the Surf-Riding (Longboards) (Compulsory Third-Party

~~^y Order in Council No. XII of 1996.~~

~~^z 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.~~

^{aa} Ordres en Conseil Vol. XIV p. 209; Vol. XVIII, p. 81; Vol. XXIII, p. 364.

Insurance) (Guernsey) Law, 1969^{bb};

- (f) the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972^{cc};
- (g) the regulatory Laws;
- (h) the Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996^{dd};
- (i) the Steam Boilers (Insurance) Ordinance, 1952^{ee};
- (j) any other enactment in force in the Bailiwick or any part thereof requiring there to be in force any policy of insurance.

[Provision as to publication of notices in Alderney and Sark and on Commission's website.](#)

bb Ordres en Conseil Vol. XXII, pp. 2 and 53; Vol. XXIV, p. 250.

cc Ordres en Conseil Vol. XXIII, p. 515; Vol. XXIV p. 250; Recueil d'Ordonnances Tome XXVI, p. 311.

dd Order in Council No. XIII of 1996.

ee Recueil d'Ordonnances Tome X, p.311.

~~77. (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.

78. (1) Any subordinate legislation made or other thing done under an enactment repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002 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 insurance intermediary, authorised insurance manager or authorised insurance representative under and within the meaning of the Insurance Business (Guernsey) Law, 1986; or
- (b) registered, registration, authorised or authorisation (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 insurance intermediary, licensed insurance manager or authorised insurance representative; or
- (ii) licensed, licence, authorised or authorisation (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 insurance intermediary, authorised insurance manager or authorised insurance representative 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 insurance intermediary, licensed insurance manager or (as the case may be) authorised

insurance representative under and within the meaning of this Law, the provisions of which shall apply accordingly; and any conditions subject to which he was registered or authorised under the said Law of 1986 shall apply in respect of the licence or authorisation under this Law which he is deemed to hold by virtue of this subsection.

(4) A person who at any time before the commencement of this Law carried on business as an insurance intermediary in such circumstances as not to require registration by virtue of Part IVA of the Insurance Business (Guernsey) Law, 1986 but who may not carry on that business in such circumstances as not to require licensing by virtue 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 insurance intermediary or authorised insurance manager 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 by the Insurance Business (Bailiwick of Guernsey) Law, 2002 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.

[Savings provisions in respect of Insurance Managers and Insurance Intermediaries Ordinance, 2021.](#)

78A. (1) Any reference in any enactment, however expressed, to any provision of this Law repealed by the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2021 (“the 2021 Ordinance”) and re-enacted (with or without modification) by, or by any provision of, the 2021 Ordinance or the Enforcement Powers Law shall, unless the contrary intention appears, be construed, after the commencement of the 2021 Ordinance, as a reference to the provision as re-enacted.

(2) Any Ordinance or subordinate legislation made or other thing done under any provision of this Law repealed or amended by the 2021 Ordinance which could have been made or done under any provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law shall have effect, after the commencement of the 2021 Ordinance, as if made or done under that provision of this Law (as so amended) or the Enforcement Powers Law (as the case may be).

(3) Subsection (2) applies to any subordinate legislation made under a provision of this Law repealed or amended by the 2021 Ordinance notwithstanding that the corresponding provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law enables subordinate legislation of a different class or description to be made (for example, a regulation rather than a rule, or vice versa) or enables subordinate legislation to be made by a different person or body.

(4) Anything in the process of being done on the commencement of the 2021 Ordinance under a provision of this Law repealed or amended by the 2021 Ordinance which could be done under any provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law may be continued to be done after the

commencement of the 2021 Ordinance under that provision of this Law (as so amended) or the Enforcement Powers Law (as the case may be).

(5) The Committee may make regulations containing such savings and transitional provision as it thinks fit -

(a) in connection with the commencement of any of the provisions of the 2021 Ordinance, and

(b) for effecting the transition from the provisions of this Law repealed by the 2021 Ordinance which are re-enacted (with or without modification) by, or by any provision of, the 2021 Ordinance or the Enforcement Powers Law to the corresponding provisions of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law (as the case may be).

(6) Regulations under subsection (5) may, without limitation, make such provision in respect of any provision of this Law (as amended by the 2021 Ordinance) or the Enforcement Powers Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law (as so amended) or the Enforcement Powers Law (as the case may be), whether or not yet in force.

(7) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under any

[other provision of this Law.](#)

Citation.

79. This Law may be cited as the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

Commencement.

80. 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.

SCHEDULE 1

Schedule 3

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.

SCHEDULE 2

Section 23

REQUIREMENTS AS TO AUDIT OF ACCOUNTS AND AUDITOR'S REPORT

General duty of auditor.

1. An auditor acting pursuant to section 23 shall carry out sufficient investigation to enable ~~him~~the auditor to form an opinion as to the matters on which ~~his~~the auditor's opinion is required by paragraph 2 of this Schedule to be expressed in ~~his~~the auditor's report.

Auditor's report.

2. The report of an auditor made pursuant to section 23 shall -
- (a) 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 licensee's state of affairs at the balance sheet or statement of financial position 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;

- (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 [or statement of financial position](#) 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 licensee prepared pursuant to section 20 is inconsistent with the accounts of the licensee for the financial year [or other period](#) to which that annual return relates.

SCHEDULE 3

Section 75(1)

GLOSSARY OF EXPRESSIONS

In this Law, the following expressions have, except ~~unless where~~ the context requires otherwise, the meanings respectively given below (and related expressions shall be construed accordingly) -

"accountant" means a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (Guernsey) Law, 2008;

"action" includes inaction and failure to act;

"actuary" means -

(a) a fellow of the Institute and Faculty of Actuaries in the United Kingdom (or a member or other person subject to the rules of such other body as the Committee may approve by regulation),

(b) any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for -

(i) a person holding a licence under the provisions of

the regulatory Laws, or

(ii) an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, or

(c) any other person who performs or has performed the functions of an actuary of a person or entity which holds or is deemed to hold, or in respect of which there is held or deemed to be held, a licence, consent, registration, permission or authorisation from the Commission under the provisions of the regulatory Laws (including, for the avoidance of doubt, and without limitation, an authorised or registered collective investment scheme).

"additional controller holding" : see section 28A(1)(b).

"administration manager" means a person appointed by the Royal Court under the provisions of section 81(2) of the Enforcement Powers Law.

"administrative or secretarial services" includes general accountancy and bookkeeping services, but not the audit of accounts;

~~"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;~~

"advertisement" includes every form of advertising and any means of bringing an invitation or information to the notice of any person including, without limitation, by publication, broadcast, electronic means, circulars, notices, window displays, posters, brochures and leaflets, and references to the "issue" of an advertisement shall be construed accordingly,

"**advice**" in relation to an insurance intermediary means advice about a client's insurance requirements which includes the merits of buying, selling, lapsing, switching, cancelling, altering or converting a policy of insurance;

"**advocate**" means an Advocate of the Royal Court of Guernsey;

"Alderney body" means –

(a) an Alderney company, or

(b) 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;

"Alderney Greffier" means the person appointed to the office of Greffier

under section 20 of the Government of Alderney Law, 2004^{ff},

"Alderney Registrar" means the Alderney Greffier, performing the functions of Registrar under the Companies (Alderney) Law, 1994,

"ancillary vehicle" : see section 20(3) of the Protection of Investors Law,

"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;

"appointed Laws" means -

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

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

(c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

^{ff} Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012); and the Government of Alderney (Amendment) Law, 2013 (No. V of 2014).

(d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(e) the Disclosure (Bailiwick of Guernsey) Law, 2007, or

(f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

"appointed person" : see section 45(1);

"appropriate Court" : see sections 11(13), 61(7D) and 72(6),

"approved supervised role" : see section 11A(1),

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

(a) the spouse, civil partner or child ~~or stepchild~~ of that person;

(aa) a person with whom that person is living as if they were married or civil partners (a "cohabitant").

(b) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) 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; and
- (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 (whether in general meeting or otherwise) in relation to a company, that other person;

Provided always that the Commission may by regulation amend the definition of "associate",

"associated company" means a company of a description set out in

paragraph (d) of the definition of "associated party".

"associated party", in relation to any person, means -

- (a) any person who is in partnership with a partner (or fellow member, in the case of a limited liability partnership) of that person;
- (b) any company body of which that person is a controller;
- (c) any body of which that person is a director;

(cc) any body in respect of which that person holds a supervised role.

- (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~~ (whether in general meeting or otherwise);

and where, pursuant to the above provisions, any person or bodyentity is an associated party in relation to another person or bodyentity, then that other person or bodyentity is an associated party in relation to that first-mentioned person or bodyentity:

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;~~

"auditor" means -

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies

(Guernsey) Law, 2008⁸⁸ and who is, where required by or under the provisions of this Law, approved by the Commission to audit the accounts of licensees, or

(b) any other person who performs or has performed the functions of an auditor of a licensee.

"auditors' management letter" means a letter issued by the auditor of a licensed insurance manager or licensed insurance intermediary 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;

"authorised insurance representative" : ~~has the meaning given by see~~ sections 2(6) and 15(1);

~~"Bailiff" has the meaning given by section 48(4);~~

"Bailiff" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué.

"Bailiwick" means the Bailiwick of Guernsey;

"Bailiwick body" means a Guernsey body, an Alderney body or a Sark

⁸⁸ Order in Council No. VIII of 2008; there are amendments not material to this enactment.

body, -

- (a) ~~a Guernsey company or an unincorporated body whose principal place of business is in Guernsey;~~
- (b) ~~an Alderney company or an unincorporated body whose principal place of business is in Alderney; or~~
- (c) ~~any body, other than a Guernsey company or an Alderney company, whose principal place of business is in Sark;~~

"Banking Supervision Law" means the Banking Supervision (Bailiwick of Guernsey) Law, 2020~~1994~~^{hh},

"body" ~~means includes~~ a company, any other legal person or and an unincorporated body;

"business day" means any day other than -

- (a) ~~a Saturday, a Sunday, Christmas Day and Good Friday.~~
- (b) ~~a day appointed as a public holiday -~~
 - (i) ~~in relation to the Bailiwick excluding the islands of~~

^{hh} ~~Order in Council No. XIII of 1994; there are amendments not material to this enactment~~ Approved by the States of Deliberation on the 18th August, 2020.

Alderney and Sark, by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958ⁱⁱ,

(ii) in relation to the island of Alderney, by Ordinance of the States of Alderney under the said section 1(1) or under paragraph (o) of Schedule 2 to the Government of Alderney Law, 2004^{jj},

(iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

"**business plan**" means a plan which includes a financial projection of the insurance manager's or insurance intermediary'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 redemption contract**" means a contract effected by an insurer

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

^{jj} Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010); and the Government of Alderney (Amendment) Law, 2012 (No. XI of 2012).

(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;

"chief executive", in relation to a company body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) for the conduct of the business of the company body and, in relation to a company body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick;

"child" includes a stepchild, an adopted child and an illegitimate child.

"civil partner" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "civil partnership" shall be construed accordingly.

"client" of an insurance intermediary includes any person who contacts, or is contacted by, that insurance intermediary with a view to obtaining or giving advice or entering into a contract of insurance with an insurer, and any person for whom that insurance intermediary has arranged a contract of insurance with

an insurer;

~~"clients' monies regulations" means regulations in respect of clients' monies held by insurance intermediaries made by the Commission under section 18;~~

"close relative" of a person means –

(a) his spouse, civil partner or co-habitant,

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

(c) the spouse, civil partner or co-habitant of any person within paragraph (b),

~~"code of conduct" means the code of conduct for authorised insurance representatives issued by the Commission under section 18;~~

"co-habitant" : see paragraph (aa) of the definition of "associate",

"Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission ~~Law (Bailiwick of Guernsey) Law, 1987~~^{kk};

^{kk} — ~~Ordres en Conseil Vol. XXX, p. 243.~~

the "Committee" means the States of Guernsey Policy and Resources Committee or such other committee as the States may specify by Ordinance;

"committee" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"company" 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;~~

"compliance officer" means an officer, appointed by a licensee or by another person or entity, with responsibility, under the terms of the officer's appointment, for independently monitoring, and reporting to the directors, partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) or chief executive on and providing guidance and making recommendations in respect of -

(a) compliance by that licensee, person or entity with -

(i) the provisions of this Law and the regulatory Laws,

(ii) any prohibition, restriction, condition, obligation,

enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and

(iii) its policies and procedures relating to corporate governance, ethics and standards of conduct, and

(b) fulfilment by that licensee, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensee, person or entity, of the applicable minimum criteria for licensing.

"Conduct of Business Rules" means the Rules ~~for insurance intermediaries~~ issued by the Commission under section 18;

"contract of agency" is an arrangement under which a person other than an employee is able, within the scope of ~~his~~that person's authority, to contract with third parties on behalf of another person;

"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;~~

"**controller**", in relation to a body, means -

(a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,

(b) a shareholder controller or an indirect controller,

(c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of that body or (where that body is a company) of any other company of which that body is a subsidiary.

"country" includes any jurisdiction, territory or other place;

~~"Court", in sections 9, 39, 43, 52, 53, 54 and 72, has the meanings respectively given in sections 9(6), 39(10), 43(10), 52(6), 53(5), 54(3) and 72(6);~~

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961^{II};

"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 kept up to date;~~
and
- (b) which does not omit information which -
 - (i) the licensee; or
 - (ii) the person in respect of whom the questionnaire is required to be lodged;

^{II} Ordres en Conseil Vol. XVIII. p.315.

knows or has reasonable grounds to suspect is, or might reasonably be thought to be, material to the assessment (pursuant to the ~~provisions of Schedule 4~~ minimum criteria for licensing) of the latter's suitability to be a person of a description set out in section 27(3);

"determined", in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

"directed person" : see section 11(1),

~~"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;~~

"director", in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes the chief executive and any member of the committee or other similar governing body,

~~"documents" includes information 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;~~

"documents" includes information stored or recorded in any form (including, without limitation, in electronic form) and -

(a) in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of a copy of the information in a form -

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language:

Provided always that the Committee may by regulation amend the definition of "documents",

"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~~ persons who ~~has his~~ have their 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~~ rules

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;

"electronic address" : see section 72(1)(ii),

"electronic form", in relation to the electronic storage or recording of information or documents, includes storage or recording by means of any form of information storage technology.

"electronic means", in relation to the sending of a document, includes any technology by which the document is -

(a) sent and received at its destination by means of electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and

(b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of "electronic address", "electronic form" and "electronic means",

"**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, ~~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;~~

"**enactment**" includes any Law, Ordinance and subordinate legislation.

"**Enforcement Powers Law**" means the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020^{mm}.

"**entity**" includes a scheme, trust, structure, arrangement and cell of a protected cell company.

"**equity share capital**" means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution;

"**exercise**", or "**control the exercise of**" voting power : for the purposes of this Law a person becomes entitled to exercise or control the exercise of voting power where that person, by any means whatsoever -

^{mm} Approved by the States of Deliberation on the 18th August, 2020.

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

(b) acquires any interest which may entitle that person to be a member of, or otherwise to exercise or control the exercise of voting power of, that body.

"Financial Services Commission Law" means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987ⁿⁿ,

"**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 26;

"**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 78(4) or (5);

"foundation" means -

ⁿⁿ Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to this enactment.

(a) a Guernsey foundation, or

(b) an equivalent or similar body created or established under the law of another jurisdiction (and however named),

"foundation official" means -

(a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012^{oo}, and

(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

"functions" includes duties, powers and privileges,

"functions" of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law.

"general business" means insurance business other than long term business;

^{oo} Order in Council No. I of 2013.

"general partner" means -

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^{PP}, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "limited partnership", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

~~"general public" includes any client;~~

"group", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

"group entity" means a body or entity carrying on business as an insurance manager or insurance intermediary and which is not a licensee but which is part of a group containing a licensee,

"Guernsey body" means -

^{PP} Order in Council No. XII of 1995; there are amendments not relevant to this enactment.

(a) a Guernsey company,

(b) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or

(c) 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;~~

"Guernsey company" means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008⁹⁹,

"Guernsey foundation" means a foundation established under the Foundations (Guernsey) Law, 2012,

"Guernsey limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law,

⁹⁹ Order in Council No. VIII of 2008.

2013^{rr},

"Guernsey limited partnership" means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995 (whether with or without legal personality).

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

"holding company" : ~~has the meaning given in see~~ Schedule 5, ~~subject to any regulations under paragraph 5 of that Schedule;~~

"Income Tax Law" means the Income Tax (Guernsey) Law, 1975^{ss},

~~"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;~~

"indirect controller", in relation to a body, means a person in accordance with whose directions or instructions -

^{rr} Order in Council No. VI of 2014; there are amendments not material to this enactment.

^{ss} Ordres en Conseil Vol. XXV, p. 124; there are amendments not material to this enactment.

(a) any director of that body,

(b) where that body is a company, any director of any other company of which that body is a subsidiary, or

(c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or, where that body is a company, in any other company of which that body is a subsidiary) directly or indirectly which makes it possible to exercise significant influence over the management of the body,

"information" includes, for the avoidance of doubt, a signature,

"inspected person" : see section 45A(4),

"inspector" means a person appointed by the Commission under section 46(1);

"insurance" includes assurance and reinsurance, except in relation to insurance intermediaries, where it does not include reinsurance;

"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~~that person's 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~~[that person](#) -

- (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~~[that person's](#) 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";

["Insurance Business Law" means the Insurance Business \(Bailiwick of Guernsey\) Law, 2002.](#)

"insurance intermediary" : ~~has the meaning given by~~ see section 2(5);

"insurance manager" : ~~has the meaning given by~~ see section 1(3);

"insurance representative" : ~~has the meaning given by see~~ section 2(6);

"insurer" means a company or other person carrying on, or holding himselfitself out as carrying on, insurance business;

"intermediary" means an insurance intermediary;

"international agreement" means -

(a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and

(b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^{tt},

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement.

^{tt} Order in Council No. III of 1994; there are amendments not material to this enactment.

"investment company" : see section 79(1) of the Protection of Investors Law,

"jurisdiction" includes any country, territory or other place,

"lawyer" means an advocate or —

(a) — a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland,

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

(c) — a person of any other class or description specified by regulations of the Committee,

"legal professional privilege", and communications or items subject thereto : see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^{uu},

"licence" means a licence granted under section 4;

"licensed banking institution" means an institution which is a licensed

^{uu} Ordres en Conseil Vol. XLIII, p. 617; there are amendments not material to this enactment.

institution within the meaning of the Banking Supervision Law (that is, an institution which holds or which is deemed to hold a banking licence under that Law),

"licensed fiduciary" means a person who is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law (that is, a person who holds or who is deemed to hold a fiduciary licence under that Law),

"licensed insurance intermediary" means a person for the time being licensed as an insurance intermediary under section 4;

"licensed insurance manager" means a person for the time being licensed as an insurance manager under section 4;

"licensed insurer" means a person who is for the time being a licensed insurer within the meaning of the Insurance Business Law (Bailiwick of Guernsey) Law, 2002;

"licensee" means a licensed insurance manager or a licensed insurance intermediary;

"limited liability partnership" means -

(a) a Guernsey limited liability partnership, or

(b) an entity formed under the laws of a jurisdiction outside

Guernsey, being an entity corresponding to a Guernsey limited liability partnership,

"limited partner" means -

(a) in relation to a Guernsey limited partnership, a limited partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^{vv}, and

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "limited partnership", a person described in paragraph (b)(ii) of that definition.

"limited partnership" means –

(a) a Guernsey limited partnership, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to

^{vv} Order in Council No. XII of 1995; there are amendments not relevant to this enactment.

the arrangement, and

- (ii) the others (referred to in this Law as "limited partners") have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"liquidator" includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

"long term business" means insurance business of any description set out in Schedule 1; and the Committee may by regulation amend any of the provisions of that Schedule;

~~"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) a Guernsey company, has the same meaning as in the Companies (Guernsey) Law, 2008^{ww},~~

~~(b) an Alderney company, has the same meaning as in the Companies (Alderney) Law, 1994, and~~

~~(c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited Liability Partnerships (Guernsey) Law, 2013.~~

"Minimum Capital Requirement" means the amount that the Commission may from time to time determine to be the Minimum Capital Requirement;

~~"name", in sections 30 to 35, includes trading name;~~

^{ww} Order in Council No. VIII of 2008; there are amendments not relevant to this enactment.

"**minimum criteria for licensing**" means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 4,

"**money laundering compliance officer**" means the money laundering compliance officer appointed in accordance with paragraph 15 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**money laundering reporting officer**" means the money laundering reporting officer appointed in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**nominated officer**" means the nominated officer nominated in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**notified supervised role**" : see section 11A(3),

"**officer**", in relation to a company, includes a director, liquidator, manager or secretary thereof,

"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 section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of

Guernsey) Law, 1972^{xx} and -

(a) in relation to Guernsey, Herm and Jethou, and within the limits of his or her jurisdiction, a member of the special constabulary of the Island of Guernsey;

(b) in relation to Alderney₇ -

(i) a member of any police force which may be established by the States of Alderney₇ and₇

(ii) within the limits of his or her jurisdiction, a special constable appointed ~~by the Court of Alderney~~ under section ~~15~~47 of the Government of Alderney Law, ~~2004~~1987^{yy};

(c) in relation to Sark₇ -

(i) the Constable, an Assistant Constable and the Vingtenier; and

^{xx} Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

^{yy} ~~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 repealed and replaced by the Government of Alderney (Amendment) Law, 2000~~Order in Council No. III of 2005.

(ii) within the limits of his or her jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

"ordinary members of the Commission" means the members of the Commission other than the Chairman.

"other supervised manager" : see section 11A(3)(e).

"partner" has the same meaning as in the Partnership (Guernsey) Law, 1995^{zz}, and includes a general partner and a limited partner of a limited partnership.

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

~~"person" includes a body of persons (whether a company or an unincorporated body);~~

"person" includes -

^{zz} Ordres en Conseil Vol. XXXVI, p. 179.

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

(a) an individual,

(b) a company,

(c) any other legal person, and

(d) 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;

"Policy and Finance Committee of the Chief Pleas of Sark" : see section 75(2),

"Policy and Finance Committee of the States of Alderney" : see section

75(2).

"**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 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;

~~"prohibition order" has the meaning given in section 18A;~~

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Companies (Guernsey) Law, 2008;

"Protection of Investors Law" means the Protection of Investors (Bailiwick of Guernsey) Law, 1987^{bbb}2020,

^{bbb} Ordres en Conseil Vol. XXX, p. 281; there are amendments not material to this Law Approved by the States of Deliberation on the 18th August, 2020.

"public" means the public in the Bailiwick or elsewhere;

the "provisions of" this Law or any other enactment include the provisions of -

(a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and

(b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the "purposes of" this Law or any other enactment),

"public" means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, policyholders and clients and potential policyholders and clients (whether of any person or entity, or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, policyholders or clients of, in or with that body,

the "purposes of" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "provisions of" this Law or any other enactment).

"qualifying capital interest" : see the definition of "related company" below.

"Recognised 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 the Insurance Business Law (Bailiwick of Guernsey) Law, 2002 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 the Insurance Business Law (Bailiwick of Guernsey) Law, 2002 by virtue of section 5 of that Law;

- (c) any other 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 ~~or desirable in for the protection of~~ the interests of the ~~licensee's clients or for the protection of policyholders public~~ or the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency);

"**reduced controller holding**" : see section 28B(1)(b).

~~"**Registrar**" means the Clerk of the Court of Alderney, exercising functions under the Companies (Alderney) Law, 1994;~~

"**Registrar of Companies**" means the holder for the time being of the office established under section 495(1) of the Companies (Guernsey) Law, 2008^{ccc},

^{ccc} Order in Council No. VIII of 2008; there are amendments not material to this enactment.

"Regulation of Fiduciaries Law" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020^{ddd};

~~"regulations" means regulations made by the Commission or by the Committee under this Law or under any Ordinance made under this Law;~~

"regulatory Laws" means -

(a) the Protection of Investors ~~Law(Bailiwick of Guernsey) Law, 1987~~^{eee};

(aa) the Financial Services Commission Law,

(b) the Banking Supervision ~~Law(Bailiwick of Guernsey) Law, 1994~~^{fff};

(c) the Regulation of Fiduciaries ~~Law, Administration Businesses and Company Directors, etc (Bailiwick of~~

^{ddd} Approved by the States of Deliberation on the 18th August, 2020.

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

^{fff} ~~Order in Council No. XIII of 1994.~~

~~Guernsey) Law, 2000~~^{§§§};

~~(ca) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,~~

(cb) the Insurance Business ~~Law~~~~(Bailiwick of Guernsey) Law,~~
2002,

(cc) the Registration of Non-Regulated Financial Services
Businesses (Bailiwick of Guernsey) Law, 2008,

~~(ce) the Prescribed Businesses (Bailiwick of Guernsey) Law,~~
2008,

~~(cf) the Enforcement Powers Law,~~

(d) any other enactment ~~or statutory instrument~~ prescribed
for the purposes of this ~~section~~Law by regulations of the
~~Commission~~ Committee;

"**regulatory penalty**" means any enforcement action taken by the
Commission (including any inquiry, investigation, proceedings, penalty,
sanction (civil or administrative), injunction, order or other remedy undertaken,
imposed or obtained under the provisions of or for the purposes of this Law or

~~§§§~~ Order in Council No. I of 2000.

the regulatory Laws) to regulate in respect of –

(a) _____ a licensee;

(b) the holder of a supervised role in respect of, or an employee of, a licensee, or

(c) any other ~~or any~~ person carrying out a function for or on behalf of a licensee;

"related company", in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest; and for the purposes of this Law -

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company;

(b) where -

(i) a company holds a qualifying capital interest in

another company; and

- (ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company;

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above under "related company", unless the contrary is shown; and

- (c) in paragraph (b)(ii) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a);

Provided always that the Committee may by regulation amend the definitions of "related company", "qualifying capital interest" and "relevant shares".

"relevant electronic address" : see section 72(1)(iii).

"relevant document" : see section 18AA(p).

"relevant person" : ~~has the meaning given in~~ see section 46(12)44A(1);

"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^{hhh} or under the regulatory Laws; or~~
- ~~(b) — such other functions as the Commission may by regulation prescribe;~~

"relevant supervisory authority" means -

- ~~(a) an authority performing in the Bailiwick or any other jurisdiction -~~
 - ~~(i) functions corresponding to any functions of the Commission, or~~
 - ~~(ii) such other functions as the Committee may by regulation prescribe,~~
- ~~including functions in respect of the Bailiwick,~~

^{hhh} — Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1987; No. I of 1998; and amended also by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law 2002.

(b) any international organisation, that is to say, any organisation, community or body -

(i) of which the United Kingdom or any other sovereign power is a member, or

(ii) which is established under any international agreement,

(c) a self-regulatory organisation, or

(d) a resolution authority, that is to say, a public authority that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

~~"Reserve Asset Requirement" means the amount that the Commission may from time to time determine to be the Reserve Asset Requirement;~~

"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 or a legal person mentioned in paragraph (b) of the definition of a Guernsey body, whose principal place of business is in Sark;

"self-regulatory organisation" means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction -

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or

- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) "activities" includes the practising of any profession,

"servant" includes a person working under a contract for services and an employee,

"shareholder controller", in relation to a company, 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;~~

"shareholder controller" -

(a) in relation to a body, and subject to the provisions of paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

(b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

"shareholders' funds" means the value of the excess of a licensee'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;~~

"significant shareholder", in relation to a body (other than a licensed banking institution incorporated in a jurisdiction outside the Bailiwick), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

"skilled person" : see section 45A(1),

"special purpose vehicle" means a body or entity created solely for the purposes of -

(a) a particular financial transaction or series of financial transactions, or

(b) the holding and/or lending of assets,

"States" means the States of ~~Guernsey~~ Deliberation;

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include

an Ordinance.

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

"supervised role" means an approved supervised role, a notified supervised role or a vetted supervised role.

"transmitted" : see section 72(1)(ii).

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989ⁱⁱⁱ.

"vetted supervised role" : see section 11A(2).

iii Ordres en Conseil Vol. XXXI, p.278.

SCHEDULE 4

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~~the activities of the applicant or licensee,
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

and

(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, policies and instructions issued ~~from time to time~~ under the

provisions of this Law and any other enactment, as
may be applicable to ~~him~~the applicant or licensee,
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. *[Repealed]*

Fit and proper persons.

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

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

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

- (b) the diligence with which heA 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~~ the public or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by hisA holding a licence or that position,
- (d) hisA's educational and professional qualifications, hisA's membership of professional or other relevant bodies and any evidence of hisA's continuing professional education or development,
- (e) hisA's knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) hisA's policies, procedures and controls for the vetting of clients or policyholders and hisA's record of compliance with any provision contained in or made under -
 - (i) ~~the appointed Lawsthe 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,~~

(~~vii~~) the Transfer of Funds (Guernsey) Ordinance,
2017, the Transfer of Funds (Alderney)
Ordinance, 2017 and the Transfer of Funds
(Sark) Ordinance, 2017,

(~~viii~~) the Single Euro Payments Area (Guernsey)
Ordinance, 2016,

(~~ix~~) the Beneficial Ownership of Legal Persons
(Guernsey) Law, 2017,

(~~x~~) the Beneficial Ownership of Legal Persons
(Alderney) Law, 2017,

(~~xi~~) any legislation implementing European

~~Community Union~~ or United Nations sanctions
and applicable in the Bailiwick, ~~or~~ and

~~(viii)~~ (vii) any other enactment prescribed for the purposes
~~hereof—of this Law~~ by regulation of the
Commission, and

~~(g)~~ A's record of compliance with the provisions of the
Companies (Guernsey) Law, 2008 in acting as a corporate
services provider or a resident agent within the meaning
of that Law,

~~(h)~~ A's record of compliance with the provisions of the
Foundations (Guernsey) Law, 2012 in acting as a
foundation official or a resident agent within the meaning
of that Law,

~~(i)~~ A's record of compliance with the provisions of the
Limited Liability Partnerships (Guernsey) Law, 2013 in
acting as a corporate services provider or a resident agent
within the meaning of that Law, and

~~(g)~~ his ~~A's~~ policies, procedures and controls to comply with
any rules, codes, guidance, principles, policies and
instructions referenced under ~~in sub~~ 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 ~~that person~~ 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 of~~ the provisions of –

(i) this Law,

(ii) the regulatory Laws,

(iii) the repealed regulatory legislation (within the meaning of the Enforcement Powers Law),

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

~~(ivv)~~ 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, ~~Law 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" in respect of whom there has been a winding up event within the meaning of the Enforcement Powers Law~~),

(c) engaged in any business practices (whether unlawful or not) -

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on ~~his~~that ~~person's~~ method of conducting business or ~~his~~that

person's 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~~ other conduct or behavior in such a way as to cast doubt on ~~his~~ that person's competence and soundness of judgement.

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

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

(b) "offence" includes an offence under the law of another jurisdiction ~~and~~ which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence ~~had~~ occurred in the Bailiwick, and

(c) "enactment" includes any primary, ~~or~~ secondary or tertiary 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) *[Repealed]*

(3) 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-Composition of board of directors.

5. (1) Where the applicant or licensee is a company, the board of directors shall include such number of –

(a) directors with executive responsibility for the management of the business, and

(b) directors without executive responsibility for the management of the business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

(2) [Repealed]

Business to be conducted in prudent manner.

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

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), an applicant or licensee ("A") shall not be regarded as conducting ~~his~~ business in a prudent manner unless -

(a) ~~he~~A maintains or, as the case may be, will maintain -

(i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

~~(b) [Repealed]~~

~~(c)~~ ~~he~~A maintains or, as the case may be, will maintain adequate liquidity, having regard to -

(i) the relationship between ~~his~~A's liquid assets and ~~his~~A's actual and contingent liabilities,

- (ii) the times at which those liabilities will or may fall due and hisA's assets will mature,
 - (iii) the nature and scale of hisA's operations,
 - (iv) the risks inherent in those operations and (where the person A is a company) in the operations of any other company in the same group so far as capable of affecting the company A, and
 - (v) any other factors appearing to the Commission to be relevant,
- (~~dc~~) heA makes or, as the case may be, will make adequate provision for –
- (i) depreciation or diminution in the value of hisA's assets (including provision for bad or doubtful debts),
 - (ii) liabilities which will or may fall to be discharged by himA, and
 - (iii) losses which heA will or may incur,

(ed) ~~he~~A maintains or, as the case may be, will maintain -

(i) adequate accounting and other records of ~~his~~A's business, and

(ii) adequate systems of control of ~~his~~A's 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~~the applicant or licensee 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 which is part of a group, 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(2)~~(a), an appropriate amount is -

(i) an amount commensurate with the nature and scale of ~~his~~A's operations, and

(ii) an amount and nature sufficient to safeguard the interests of ~~his~~A's clients and policyholders ~~and potential clients and policyholders~~, having regard to -

(A) the nature and scale of ~~his~~A's operations,

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

(C) any other factors appearing to the Commission to be relevant,

(b) subparagraph [2\(2\)\(eb\)](#), 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~~[the applicant or licensee](#) and, which are capable of providing liquidity within a reasonable period, and

(c) subparagraph [2\(2\)\(ed\)](#) –

(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 ~~prudently~~, and

(B) the applicant or licensee to comply with the duties imposed ~~on him~~ by or under [the provisions of](#) this Law or any enactment listed in paragraph 3(2)(f), and

(ii) where the applicant or licensee is a company, in determining whether those systems are adequate

the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

6A. The applicant, licensee and any person who is, or is to be, ~~a director, controller, partner or manager~~ the holder of a supervised role in respect of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

Power to make regulations.

7. The Committee may, ~~in accordance with section 63,~~ make regulations amending the provisions of this Schedule.

SCHEDULE 5

Section 75 & Schedule 3

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~~ the provisions of items (c) and (d), any shares held or power exercisable -
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity);
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in ~~paragraph item~~ (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The Committee may make regulations amending ~~the meaning of "holding company" and "subsidiary company" for the purposes of all or any of~~ the provisions of this ~~Law~~Schedule.