



Guernsey Financial  
Services Commission

**Feedback on the Engagement on the Protection of  
Investors (Bailiwick of Guernsey) Law, 2018  
(the “Protection of Investors Law”)**

## **Feedback on the Engagement on the Protection of Investors (Bailiwick of Guernsey) Law, 2018 (the “Protection of Investors Law”)<sup>1</sup>**

The Commission previously requested engagement on the draft Protection of Investors Law.

Responses were received from a cross section of industry, trade associations and business groups/committees.

Overall, the engagement has highlighted the willingness by stakeholders to continue to be involved and helpful suggestions for the Revision of Laws Project.

We would like to thank everyone who responded to the engagement and we look forward to continuing to work with our stakeholders going forward.

The feedback received raised some issues which are set out below by topic. Where considered necessary, we have included a brief explanation of the issues raised in blue. While we have not been able to address in this document every comment made, we have sought to address common concerns and comments raised by the stakeholders.

### **1. Issues raised in relation to making of ordinances, regulations, rules, codes, etc**

*A query was raised whether there would be consultation before making or amending ordinances, regulations, rules, codes of practice and guidance.*

Where the Committee (or any other person) makes regulations under the Protection of Investors Law, these will be subject to prior relevant consultation (per section 74 of the Protection of Investors Law).

In relation to codes of practice and guidance, the Commission, after consultation with -

- (1) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and
- (2) such other persons as appear to the Commission to be appropriate,

may (without prejudice to any other power conferred by the provisions of the Law or the regulatory Laws as to the making of codes or guidance) issue such codes of practice and/or such guidance on the matters set out in section 28 as the Commission thinks necessary.

In relation to rules, the Commission must, under section 74, before making the rules, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules 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 must consider any representations made to the Commission concerning the proposals. This reflects the Commission's practice under the current legislation.

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<sup>1</sup> The final draft will be available once signed off by the relevant States Committees and published in the Billet d'État.

## 2. Directions

### *Scope of persons who may be subject to Directions*

Concerns were raised regarding the scope of persons who fall within the definition of “directed person”. In particular in relation to:

i) former licensees and former schemes.

Currently, directions apply where a licensee’s licence is surrendered or revoked<sup>2</sup>. In particular directions allow for obligations to be imposed after the licence ceases to exist (as well as in the period between surrender notification or notice of revocation and the actual surrender or revocation of the licence). For example, this could be used to require an entity to have runoff insurance where there is significant compensation claims which may be payable by the entity. As such, directions may apply to former licensees and as currently drafted there is no end date to the imposition of the direction.

Paragraph 4.7.2 of the Policy Letter states that the availability of directions should be consistent across the Supervisory Laws and paragraph 4.7.2(a) of the Policy Letter indicates that the scope of directions should be broadened to apply to permission holders and supervised roles. While the *Protection of Investors (Bailiwick of Guernsey) Law, 1987* (the “1987 Law”) does not currently have direction provisions in it, the application of directions to former licensees is presently contained in the other Supervisory Laws which do have direction provisions. Further, 4.7.2 of the Policy Letter clearly indicates that directions should be of general rather than limited application and not merely available where a licence is being revoked, surrendered or has expired.

ii) A person reasonably believed to have contravened a provision of the regulatory laws.

**Having considered this in combination with the provisions in the draft *Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2017* (“the Enforcement Law”), we understand the concerns raised and will remove this.**

iii) Ancillary vehicles.

It was originally intended that ancillary vehicles would be subject to an application process (4.5.2 of the Policy Letter). For example, this could be used to require an entity to have appropriate systems in place for storage of documents in the rundown or winding up of the vehicle. This would have meant that ancillary vehicles would clearly have been permission holders and would therefore have been intended to be included in the directions powers. In addition, an ancillary vehicle is so closely associated with the licensee/permission holder or its business, the Law Officers have advised that

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<sup>2</sup> Section 16 of the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“Insurance Business Law”); section 11 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“Insurance Managers and Insurance Intermediaries Law”); section 12 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (“Banking Supervision Law”); section 12 of the Regulation of Fiduciaries, Administration Businesses and Company directors, etc (Bailiwick of Guernsey) Law, 2000 (“Regulation of Fiduciaries Law”).

they are satisfied that it would not be contrary to the Policy Letter to include them, given that it would be inappropriate (and frankly impossible) for a policy letter to set out all the provisions of the Law itself.

### **3. Information published by the Commission**

#### *a) Scope of publication of information, for example refusal of a licence, authorisation or registration*

Concerns were raised regarding the scope of the information which may be published. In particular in relation to publication of the refusal of a licence, authorisation or registration. The concern was that this may have occurred “at no fault” of the clients but could result in them not being able to raise funds in the future.

Currently, the Commission has the power to publish the type of information set out in section 34D of the 1987 Law which is expressed in very general terms. The other Supervisory Laws expressly confer power to publish information in relation to the imposition of conditions and directions<sup>3</sup> (see (b) below).

Regarding the publication of a refusal of a licence, authorisation or registration under the new draft clause, this is a permissive power only and it is very unlikely that this would occur as a matter of general policy (bearing in mind that in exercising its powers the Commission must have regard to the protection of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre). See for example the limited publications on the Commission’s website re refused licences etc. In addition, other Supervisory Laws already expressly confer power to publish the refusal of a licence.

#### *b) Publication of imposition of conditions, directions and enforcement requirements*

Currently, the Commission has express power under other Supervisory Laws to publish information in relation to the imposition of conditions and directions<sup>4</sup>. However, as can be seen from the Commission’s website, it is extremely rare that the Commission publishes details of the conditions or directions imposed. One exception may be where such publication was for the protection of investors (for example where a fund was suspended).

**However, due to the concerns raised in relation to this matter the wording of section 31(2) will be changed as set out in the Annex hereto.**

### **4. Definition of “relevant person”<sup>5</sup>**

#### *a) Inclusion of persons other than licensees, funds and the management and controllers of licensees*

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<sup>3</sup> Section 12 of the Insurance Managers and Insurance Intermediaries Law, section 17 of the Insurance Business Law; section 13 of the Banking Supervision Law; section 13 of the Regulation of Fiduciaries Law.

<sup>4</sup> Section 17(2) of the Insurance Business Law and section 12(2) of the Insurance Managers and Insurance Intermediaries Law.

<sup>5</sup> The term “relevant person” is defined in section 32 and relates to section 33 (Power to require information and production of documents etc).

Some respondents were concerned that “relevant person” included persons other than licensees, funds and those who undertook Supervised Roles in relation to licensees (e.g. managers and controllers).

The Policy Letter clearly indicated that the Commission should be able to require the provision of information from funds, licensees, unsupervised group entities and special purpose vehicles, discretionary exempted persons and associated parties<sup>6</sup>. The Policy Letter also stated that the Commission should be able to request the provision of information from a broad range of persons and entities wherever they reside<sup>7</sup>. In addition, as has been mentioned in other contexts, the Law Officers have advised that it would be inappropriate (and frankly impossible) for a policy letter, which is intended to deal with high level policy rather than textual specifics, to set out all the detailed content of the Law itself.

Accordingly, it would not be appropriate to limit “relevant person” to licensees, funds and those undertaking Supervised Roles in relation to licensees.

While it is appreciated that the definition of “relevant person” is necessarily wide, the Commission would not generally seek to obtain information or documents from persons other than the licensee unless the licensee was not in possession of, or otherwise unable or unwilling to provide, the relevant information or documents.

*b) Voluntary Interviews*

Concern was raised that the Commission did not have the power to request an interview.

The Policy Letter provides that the Commission should have the power to request, but not compel, an interview under the Supervisory Laws.<sup>8</sup> The Enforcement Law by contrast clearly provides for compelled interviews. Section 33(1) provides that information shall be “furnished” to the Commission (as compared to a requirement to attend before the Commission which would indicate a mandatory interview). Voluntary interviews or meetings are dealt with in section 36 of the Protection of Investors Law<sup>9</sup> and include those persons set out in 5.4 and 5.9.5 of the Policy Letter.

*Does the Commission plan to “regulate” the “relevant persons”?*

The Commission will not “regulate” the persons contained in the definition of “relevant person” other than those they currently licence, authorise or register although other categories of persons may of course be subject to particular powers conferred by the Supervisory Laws. The wide definition of “relevant person” will allow the Commission to obtain information and documents so that the Commission can undertake its functions and objectives.

## **5. Requesting meetings with auditors, actuaries and others**

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<sup>6</sup> 7.2.1 and 5.4 of the Policy Letter.

<sup>7</sup> 5.4.2 of the Policy Letter.

<sup>8</sup> At 5.4.3.

<sup>9</sup> This relates to auditors, actuaries, designated administrators, designated trustees or custodians, associated parties or officers of, or holders of supervised roles in respect of a licensee or former licensee or an authorised or registered collective investment scheme or former authorised or registered collective investment scheme.

- a) *Inclusion of designated administrators, designated trustees or custodians, associated parties or officers of, or holders of supervised roles in respect of current and former licensees or funds*

The power to require a bilateral meeting with auditors or actuaries was proposed in the Policy Letter (at 5.9.5) for inclusion in the Supervisory Laws. The provision in the Supervisory Laws relates to requesting a meeting (rather than require). The other parties have been included pursuant to 5.4.3 of the Policy Letter which provides that the Commission should have the power to request, but not compel, an interview under the Supervisory Laws. Accordingly, the person whom the Commission has requested the interview of is able to decline to attend.

The Commission does not intend to use the power to request a bilateral meeting as a replacement for trilateral meetings, for example meetings between the Commission, a licensee and its auditor. The Commission would only request a bilateral meeting where it considers it necessary or desirable with a view to the performance of its functions or in the interests of the public or the reputation of the Bailiwick as a finance centre.

It should be noted that trilateral meetings between the licensee, the auditor or actuary and the Commission would still be available and to clarify this a provision expressly referring to trilateral meetings, similar to that set out in section 83 of the *Insurance Business (Bailiwick of Guernsey) Law, 2002 (the “Insurance Business Law”)*, will be inserted.

- b) *Meetings with Auditors and confidentiality*

Concerns were raised that where the Commission requests that an auditor attend a meeting without its client (and the auditor agrees to such a request) and the Commission imposes confidentiality restrictions on the auditor, how the auditor would be able to bill for its time.

The Policy Letter (at 5.9.6) clearly indicated that it was intended that the Commission should, in appropriate circumstances, be able to impose confidentiality provisions around such communications. Of course, the Commission would not seek to do so in an unreasonable manner and only as necessary in the circumstances.

In relation to charging of clients, this is not dissimilar to the position that exists in relation to disclosures by auditors to the Commission in fulfilment of their obligations to the Commission<sup>10</sup>. The position could also arise in the course of a criminal investigation (for example, into money laundering offences) or the reporting of a suspicious transaction.

- c) *Voluntary meetings and legal privilege*

A suggestion that protection for legal privilege be included in the section concerning voluntary meetings.

**A subsection has been included in section 36 providing that:**

**“Nothing in this section shall compel the production or divulgence of a communication or item subject to legal professional privilege when it is in the**

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<sup>10</sup> Please refer to section 27A of the Protection of Investors Law.; section 82 of the Insurance Business Law; section 59 of the Insurance Managers and Insurance Intermediaries Law; and section 31 of the Fiduciaries Law.

**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.”**

This provision is the same as that contained in section 33 (Power to require information and production of documents etc.).

d) *The Commission and its relationship with auditors*

The Commission enjoys a relationship with its licensees and auditors which is largely positive, productive and based upon mutual respect and trust. A number of the comments made by persons responding to the engagement indicated that there were concerns that the Commission was seeking to act as a quasi-regulator of the audit profession.

The Commission’s functions are set out in the *Financial Services Commission (Bailiwick of Guernsey) Law, 1987* (the “Commission Law”). The notifications and communications in relation to auditors of licensees and funds will assist the Commission in fulfilling these functions. In particular, the ability of the Commission to request a voluntary meeting with auditors without the presence of the licensee is merely one tool that the Commission may seek to use in appropriate circumstances. It is unlikely that this gateway would be used as a matter of course or frequently.

In relation to the other powers of the Commission which may relate to auditors, for example imposition of a condition upon a licensee to remove an auditor, the Commission would seek to do this only when necessary. For example, it may be that the auditor is unsuitable, perhaps lacking a particular expertise necessary to audit that particular financial services company, that the auditor does not have adequate resources to audit the company, or the auditor is no longer of good standing with its regulator. **Where the Commission imposes a condition requiring the removal of a person as auditor of a company, the auditor will be provided with notice of the decision and will have a right of appeal.** The power to impose such a condition and the provisions in respect of the right of appeal are currently contained in the 1987 Law (and other Supervisory Laws)<sup>11</sup>. The Commission has rarely considered imposing this type of condition. However, the Commission regards this power as a necessary element in the range of options that it needs to have for the protection of the public or the reputation of the Bailiwick.

## **6. Appointment of Skilled Person**

a) *Definition of “inspected person”*

Concerns were raised regarding the scope of persons who fall within the definition of “inspected person” for the purposes of the skilled person appointments. In particular in relation to the persons set out in blue below.

**We have reviewed the scope of “inspected persons” and, while they indeed fall within the scope of the Policy Letter or the current legislation , we are of the view that, in light of the feedback from this engagement, the change of focus of the**

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<sup>11</sup> In particular please see reference to removal of auditors by condition in s. 35(3) of the Protection of Investors Law.

**Supervisory Laws and other powers available to the Commission, it would be appropriate to reduce the scope of the definition of “inspected person”. Accordingly, the definition of “inspected person” will be amended in the Protection of Investors Law as follows:**

i) Applicants for licences

**Having considered this in combination with the other provisions in the Protection of Investors Law, we understand the concerns raised and will remove this.**

ii) Former licensees and Former funds

**Having considered this in combination with the provisions in the Enforcement Law, we understand the concerns raised and will remove this.**

iii) Persons other than a person mentioned in paragraph (a), (b), (c) or (f) carrying on any class or description of regulated activity.

**Having considered this in combination with the provisions in the Enforcement Law, we understand the concerns raised and will remove this.**

iv) An associated party of an inspected person specified in any other paragraph of this subsection

**Having considered this in combination with the provisions in the Enforcement Law, we understand the concerns raised and will remove this.**

v) A person who is the holder of a supervised role in respect of an inspected person.

**Having considered this in combination with the provisions in the Enforcement Law, we understand the concerns raised and will amend this to limit it to apply only to persons who hold a supervised role in respect of a licensee.**

vi) A person who performs any function on behalf of -

- (i) an inspected person specified in any other paragraph of this subsection, or
- (ii) a person acting for and on behalf of an inspected person so specified, in relation to regulated activities, including, without limitation, a person who is an auditor of an inspected person so specified.

**Having considered the issues raised, this will be amended to:**

**“a person who performs any function on behalf of a licensee or a person acting for and on behalf of a licensee in relation to regulated activities, including, without limitation, a person who is an auditor of an inspected person so specified.”**

This is in keeping with the current powers under section 69(12)(b) of the Insurance Business Law and section 46(12) of the *Insurance Managers and*



*Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002* (the “Insurance Managers and Insurance Intermediaries Law”).

*b) Costs*

A concern was raised regarding the requirement for the inspected person to pay the costs of the skilled person.

While it is appreciated that the appointment of a skilled person can be costly, the Commission considers that the provisions relating to payment of skilled persons are similar to that relating to payment of inspectors and in accordance with the Policy Letter (at 5.6). The alternative, which is not considered acceptable, would be to require the costs to be met by the industry as a whole. In addition, if the court is satisfied that a sum is not reasonable in amount or was not reasonably incurred, or that the Commission acted unreasonably, frivolously or vexatiously in incurring the sum, it would not be recoverable as part of any claim the Commission made.

*c) Protection from liability for skilled person*

A request was made that skilled persons be afforded the same protection as the Commission as set out in the *Financial Services Commission (Limitation of Liability) Ordinance 1990*, unless the thing is done or omitted to be done in bad faith.

The Policy Letter (at 5.3.6(e)) provides that skilled persons should not be liable in any civil proceedings in respect of anything done (or not done) in the preparation of the report unless the liability arises in respect of fraud, wilful misconduct or gross negligence. Accordingly, this provision has been drafted to reflect the provisions of the Policy Letter.

## **7. Supervised Roles**

*a) Objection to existing holders of supervised roles*

Under the current provisions in the 1987 Law, classes of persons such as MLROs still require prior approval before appointment and can be subject to sanctions, therefore this has not changed substantively, other than to move sanctions to the Enforcement Law. The grounds upon which the Commission can object to an existing holder of a vetted or approved supervised role is that the person is not or is no longer a fit and proper person to hold such a role. This is a significant sanction and as such it is more fitting that it be contained in the Enforcement Law.

Before considering such a sanction, the Commission’s approach would in the normal course involve communication with the relevant position holder and generally the Commission would anticipate that it would not need to use such a power with a co-operative person. For example, where an existing MLRO is no longer appropriately qualified alternative options might be for the person to take steps to obtain the qualification (as there is generally a transition period to allow this to occur where new requirements are put into place) or for them to step down.

- b) *Whether directors, partners etc of collective investment schemes are subject to the Vetted Supervised Role requirements*

Persons acting as a directors or partners of collective investment schemes are not subject to the notification and no objection requirements under section 40 of the Protection of Investors Law (Notification of and objection to holders of vetted supervised roles) as this provision only applies in relation to vetted supervised roles in respect of licensees.

- c) *How do Vetted Supervised Roles apply to licensees which only have branches in the Bailiwick?*

The definition of directors includes “any person who occupies the position of or fulfils the role of director, by whatever name called ... and any member of the committee or other similar governing body”. Therefore, the local members of the committee or similar governing body in Guernsey would be directors and therefore in a Vetted Supervised Role (and the same would apply to the local MLROs, MLCOs and compliance officers).

## **8. Representations, Notices of Decisions and Appeals**

- a) *Publication of conditions or directions and rights of appeal*

A concern was raised that the decision to publish details of a condition or direction was not subject to a right of appeal (as compared to the decision to impose a condition or direction which is subject to a right of appeal).

**While the decision to publish is not subject to a right of appeal, such decisions may potentially be judicially reviewed.**

Broad powers in relation to the publication of conditions and other particulars is contained in most of the current Supervisory Laws<sup>12</sup>.

In particular the Insurance Managers and Insurance Intermediaries Law and the Insurance Business Law contain a specific requirement for the Commission to publish, in the list of licensees it maintains, “unless the Commission determines otherwise, the fact of any conditions of the licence or directions restricting the acceptance of new business”.

**The current powers of publication are not subject to a right of appeal but, again, may potentially be judicially reviewed.**

- b) *Independent appeal process*

One matter raised was that the process for imposing sanctions, conditions, directions etc does not have an independent tribunal process. The concern was that an appeal to the Courts can be expensive and slow.

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<sup>12</sup> Section 12(2)(d) and (e) of the Insurance Managers and Insurance Intermediaries Law, section 17(2)(e) and (f) of the Insurance Business Law; section 13(5) of the Regulation of Fiduciaries Law; section 13 of the Banking Supervision Law.

The inclusion of an independent appeals process other than to the Court, would require significant structural changes to the regulatory legislation. The Policy Letter did not provide for any such change to the legislation. The Commission has adopted a process in relation to sanctions whereby a person from the Commission's panel of senior decision makers (generally comprising UK Queen's Counsels) is appointed to make the decision in cases where there is evidence of serious contraventions of the Supervisory Laws.

In addition, even if there were an independent appeals tribunal, there would still have to be a right of appeal from the tribunal to the Royal Court.

However, the Protection of Investors Law deals mostly with supervisory issues rather than sanctions. In particular, conditions and directions are supervisory tools and used in a supervisory context, in contrast to the use of enforcement requirements under the Enforcement Law.

## **9. Other Issues**

### *a) Revocation and Suspension of Licences, Authorisations and Registrations*

One respondent queried whether it was still possible to suspend or revoke a licence, authorisation and registration.

Yes, suspension of a licence at the request of the licensee, or the authorisation or registration of a fund at the request of the designated administrator or the designated trustee or custodian, remains possible.

### *b) Rules and Regulations*

A concern was raised that Part III contained power to make regulations in relation to matters which were currently dealt with by rules.

The regulation making powers under Part III are broadly similar to those contained in Part III of the 1987 Law.

Part III contains the following regulation making powers:

- i) Section 22 – Regulations concerning controlled investment business – broadly similar powers are contained in section 21 of the 1987 Law.
- ii) Section 23 – Fee-making powers – broadly similar powers are contained in section 22 of the 1987 Law but (in accordance with the Policy Letter) rendered into a form consistent with the other Supervisory Laws.
- iii) Section 24 – Regulations limiting validity of licences, authorisations or registrations– a similar regulation making power is contained in section 23 of the 1987 Law.
- iv) Section 25 – Exemption Regulation making power - a similar regulation making power is contained in section 24 of the 1987 Law.
- v) Section 26 – Unsolicited calls regulations – a similar regulation making power is contained in section 25 of the 1987 Law.

- vi) Section 27 – Cancellation regulations– a similar regulation making power is contained in section 26 of the 1987 Law.

The Law Officers have advised that, while there is no explicit requirement to consult with industry in relation to the making of regulations in the Protection of Investors Law (the consultation requirements referring to political consultation), the Commission and the Policy and Resources Committee, as public authorities, are as a matter of good administrative practice generally expected to do so.

c) *Retention of documents*

Concern was raised in respect of the requirement of persons set out in section 37(1)(d) (a person other than a person mentioned in paragraph (a), (b) or (c) carrying on any class or description of controlled investment business) to retain documents under section 37.

The purpose of this was to require persons who were carrying on controlled investment business without the appropriate licence or exemption (and thus in contravention of the Protection of Investors Law) to retain documents on the same basis as licensees. This would facilitate the powers under the Enforcement Law in relation to the Commission policing the perimeter of financial services business in the Bailiwick. **However, due to the concerns that have been raised, this will be removed.**

Concern was raised regarding the ability of the Commission to extend the 6-year period.

While the Commission is aware of potential difficulties for former licensees where information is requested after the 6-year period, there are certain situations which may arise in which it could be critical for the protection of the public to be able to request information after this period. In particular, where the Commission has the power to request information or documents, it is imperative that this power is not frustrated by a former licensee or their related party disposing of the documents on the day the 6-year period ends.

d) *Power to obtain information from an unsupervised entity on behalf of another supervisory authority*

A concern was raised that the power for the Commission to obtain information and document for unsupervised entities of a group on behalf of another supervisory authority was not expressly contained in the Protection of Investors Law.

The Commission has and will continue to have the power under section 21B of the Commission Law to exercise any relevant power conferred on the Commission under an enactment to assist or enable a requesting authority to carry out its functions. This is the power the Commission currently uses to obtain information for other supervisory authorities and, together with section 33 in relation to unsupervised entities of a group, obtain relevant information on behalf of another supervisory authority. The power to exercise relevant powers at the behest of a requesting authority in the interests of the public or the reputation of the Bailiwick as a finance centre is also set out in section 11 of the Enforcement Law.

e) *Section 35 – prospective auditor.*

Having considered the matters raised in respect of the inclusion of “prospective auditor” in section 35, we have determined to remove the reference to “prospective auditors” from this provision.

f) *Other powers in relation to audits and auditors*

A concern was raised in relation to various powers of the Commission relating to auditors of licensees or funds. In particular, in relation to the potential ability of the Commission to impose a condition or direction upon a licensee or fund requiring the removal of an auditor and the power for the Commission to make rules in relation to audits and auditors of funds (section 14(2)(d)).

The power for the Commission to make rules in relation to audits and auditors of funds is an existing power of the Commission (please see section 15(2)(d) of the 1987 Law). Currently there are a number of rules which relate to this power. These include the Collective Investment Schemes (Class A) Rules 2002 and the Authorised Collective Investment Schemes (Class B) Rules 2013.

Under the 1987 Law, the Commission may, in appropriate circumstances, impose a condition on a licence, authorisation or registration requiring the removal of a person as auditor of that licensee or collective investment scheme (section 6 and section 9). As such, the power to do so by way of condition or direction (due to the change in nature of directions) is merely a continuation of the current powers of the Commission.

g) *Inclusion of market abuse provisions in the Enforcement Law*

Comment was made that the non-enforcement market abuse provisions should be included in the Supervisory Laws rather than the Enforcement Law.

These provisions were centralised into the Enforcement Law to ensure that the provisions remained consistent and the contents of the regime remained grouped together. There was the concern that placing one part of the market abuse provisions in the Supervisory Laws and the other in the Enforcement Law would inevitably lead to inconsistencies and possibly a frustrating system requiring read across between two Laws.

It is felt unlikely that the inclusion of the relevant market abuse provisions in the Enforcement Law would, objectively, indicate that the issuing of a code of practice in relation to Market Abuse is an enforcement issue. The legal effect of the provision remains unchanged, wherever it is. The boundaries between when a licensee is, in practice, in supervision or in enforcement remain clear.

h) *Annual returns and financial crime information*

Concerns were raised that as drafted section 52 may not allow the Commission to make rules in relation to the provision of additional annual returns on financial crime.

**While it is the view that as drafted the Commission would have the power to request such information in relation to financial crime (indeed, financial crime is**

**specifically mentioned at subsection (2)(b)), as this has been raised as a concern, we will include an additional specific reference to this in section 52.**

*i) Changes to fee making powers*

A concern was raised regarding the power of the Committee to make regulations in respect of the payment of fees under section 23.

The provisions relating to the power to make regulations regarding fees are significantly varied between the Supervisory Laws. For example the Banking Supervision Law only provides for regulations to be made for fees relating to applications for licences and annual fees. However, the Insurance Business Law (the most recent of the Supervisory Laws) has a very broad power to make regulations in relation to fees. In order to make the Supervisory Laws more consistent (an aim stated in 2.3 of the Policy Letter), the power to make regulations in relation to fees will be made substantially similar across the Supervisory Laws. This will enable flexibility and consistency in the future fee regulations to fairly distribute costs across the supervisory sectors.

## **Annex**

### Wording of section 31(2)

- 2) The list maintained under subsection (1) shall contain, in relation to each licensee and authorised or registered collective investment scheme -
  - a) the name of the licensee or scheme,
  - b) in the case of a licensee, the restricted activity identified and described in Schedule 2 in respect of which the licence was granted,
  - c) in the case of a scheme, the category of controlled investment identified and described in Schedule 1 in respect of which the authorisation or registration was granted,
  - d) the addresses or principal places of business of the licensee or scheme in the Bailiwick,
  - e) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of-
    - i) any conditions imposed in respect of the licence, authorisation or registration,
    - ii) any directions given to the licensee or scheme, or
    - iii) any enforcement requirements imposed on the licensee or scheme or any other person in connection with the licence, authorisation or registration, and
  - f) such other particulars as the Commission may determine.