

ORDER IN COUNCIL

XXII
2002

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 4th November, 2002.)



2002

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 4th day of November, 2002 before Sir de Vic Carey, Bailiff;
present:— Mrs. Eileen May Glass, Laurence Lenfestey Guille,
Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David
Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter
Gerald Lane, Michael John Wilson, Michael Henry De La Mare,
and Michael John Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd day of October, 2002, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 22nd day of October, 2002

PRESENT,

The Queen's Most Excellent Majesty in Council

THE FOLLOWING report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:-

“IN ACCORDANCE with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:-

“1. That, in pursuance of their Resolution of the 26th day of June, 2002, the States of Deliberation at a meeting on the 31st day of July, 2002 approved a “Projet de Loi” entitled “The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it.”

“2. That the States of the Island of Alderney at a meeting held on 1st August 2002 considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 13th August 2002 considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. That the Projet de Loi is set forth in the Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002”, and to order that it shall have force of law in Bailiwick of Guernsey.

“THE COMMITTEE, have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

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

ARRANGEMENT OF SECTIONS

PART I INSURANCE MANAGERS & INSURANCE INTERMEDIARIES

Insurance managers

1. Restriction on acting as insurance manager.

Insurance intermediaries

2. Restriction on acting as insurance intermediary.

PART II LICENSING OF INSURANCE MANAGERS & INSURANCE INTERMEDIARIES

3. Application for insurance manager's or insurance intermediary's licence.
4. Grant or refusal of insurance manager's or insurance intermediary's licence.
5. Insurance manager's and insurance intermediary's licence.
6. Period of validity of insurance manager's and insurance intermediary's licence.
7. Conditions of insurance manager's and insurance intermediary's licence.
8. Suspension of insurance manager's or insurance intermediary's licence.
9. Revocation of insurance manager's or insurance intermediary's licence.
10. Surrender of insurance manager's or insurance intermediary's licence.

PART III

^a No. XXII of 2002.

Order in Council No. XXII of 2002

GENERAL PROVISIONS AS TO INSURANCE MANAGERS
& INSURANCE INTERMEDIARIES

Directions to licensees

11. Directions to licensed insurance managers and licensed insurance intermediaries.

Publication of information as to licensees

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

General requirements for insurance managers

13. Insurance managers to inform Commission of insurers for which they act.
14. Address for service.

General requirements for insurance intermediaries

15. Insurance representatives to be authorised.
16. Advice, etc. only through authorised insurance representatives.
17. Insurance only to be placed with recognised insurers.
18. Conduct of Business Rules and codes of conduct.

Other miscellaneous restrictions and requirements

19. Notification of change of director, etc.
20. Annual return of licensee.
21. Appointment of auditors.
22. Annual accounts.
23. Audit of accounts.
24. Licensees to provide auditor's management letter and evidence of indemnity insurance.
25. Licensees to provide information on continuing business relationships.
26. Deposit of annual return, accounts, etc. with Commission.
27. Other miscellaneous provisions applicable to licensees.

Notification of significant shareholding

28. Notification of acquisition of significant shareholding in licensee.

Order in Council No. XXII of 2002

Winding up of insurance intermediaries

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

PART IV
BUSINESS DESCRIPTIONS AND NAMES

30. Restrictions on use of certain descriptions and names.
31. Permission to use certain descriptions or names.
32. Commission may object to certain names.
33. Offences in relation to objections to names.
34. Incorporation and change of name of companies.
35. Applications by Commission for change of company name.

PART V
OBJECTIONS TO CONTROLLERS

36. Notification of and objection to controllers, etc.
37. Objection to existing controllers, etc.
38. Contraventions by controllers, etc.
39. Restrictions on sale of shares.

PART VI
SUPPLEMENTARY MATTERS

Notice of decisions

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

Representations and appeals

41. Representations concerning decisions of Commission.
42. Disclosure of reasons for decisions of Commission.
43. Appeals against decisions of Commission.

Obtaining of information by Commission

44. Site visits.
45. Power to request and obtain information and documents.

Order in Council No. XXII of 2002

- 46. Investigations by inspectors.
- 47. Investigation of suspected offences.
- 48. Power of Bailiff to grant warrant.
- 49. Powers conferred by Bailiff's warrant.
- 50. Legal professional privilege, liens and duties of confidentiality.
- 51. Falsification, etc, of documents during investigation.

Various enforcement powers of Commission

- 52. Repayment of monies from unlawful business.
- 53. Injunctions to restrain unlawful business, etc.
- 54. General provisions as to receivers.
- 55. Provision as to codes of practice, etc.

Disclosure of information

- 56. Restrictions on disclosure of information.
- 57. Cases where disclosure is permitted.
- 58. Information supplied to Commission by relevant overseas authority.
- 59. Communications to Commission by auditors, etc.
- 60. Meetings of Commission with auditors, etc.

Advertising

- 61. Regulations as to advertisements.

PART VII
GENERAL PROVISIONS

Ordinances and regulations, etc

- 62. Ordinances, regulations, rules and codes.
- 63. Regulations: consultation with Committees and laying before States.

Criminal proceedings

- 64. Offences as to false or misleading information, etc.
- 65. Penalties.
- 66. Criminal proceedings against unincorporated bodies.
- 67. Criminal liability of directors, etc.
- 68. Defence of due diligence.

Order in Council No. XXII of 2002

69. Jurisdiction.

Liability of States

70. Exclusion of liability.

Miscellaneous

71. Fees.
72. Service of notices and documents.
73. Verification of information.
74. Evidence.
75. General interpretation.
76. Effect on other Laws relating to insurance managers, etc.
77. Provision as to publication of notices in Alderney and Sark and on Commission's website.
78. Savings provisions.
79. Citation.
80. Commencement.

SCHEDULES

- Schedule 1: Descriptions of long term business.
Schedule 2: Requirements as to audit of accounts and auditor's report.
Schedule 3: Glossary of expressions.
Schedule 4: Minimum criteria for licensing.
Schedule 5: Meaning of "holding company" and "subsidiary company".

PROJET DE LOI

ENTITLED

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

THE STATES, in pursuance of their Resolution of the 26th day of June, 2002^b, 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 a licence granted under section 4.

(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 -

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

Order in Council No. XXII of 2002

- (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.

(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.

Order in Council No. XXII of 2002

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 31 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 “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” or “assurance”.

Order in Council No. XXII of 2002

(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 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 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.

Order in Council No. XXII of 2002

(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.

(5) An "**insurance intermediary**" is a person other than an insurance representative or a licensed insurance manager 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

Order in Council No. XXII of 2002

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 (Bailiwick of Guernsey) Law, 2002.

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 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

Order in Council No. XXII of 2002

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;

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 of the applicant to provide such additional information and documents as the Commission may reasonably require for the purpose of determining the application.

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

Order in Council No. XXII of 2002

- (a) to provide a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on such aspects of that information or statement as the Commission may specify;
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement or report or anything in them.

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

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

(8) Before deciding whether or not to grant an application under this section the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to 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 General Purposes and Finance Committee of the Chief Pleas of Sark.

(9) If there is any change to any of the information supplied to the Commission by or on behalf of an applicant for the purposes of an application under this section (whether by virtue of the information becoming out of date, or being

Order in Council No. XXII of 2002

found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission, before the application is granted or refused, of the change; and a failure to do so shall, without prejudice to the generality of any other provision of this Law, be a ground for the refusal or revocation of a licence.

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) 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 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

Order in Council No. XXII of 2002

authorised insurance representative 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 that the interests of the public, policyholders or potential policyholders or clients (in the

Order in Council No. XXII of 2002

case of an insurance intermediary), or 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, 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

Order in Council No. XXII of 2002

regard to that person's likely influence on the applicant as a controller of the description in question, the criteria of Schedule 4 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, keep clients' money separate from his own money and maintain separate client accounts;
- (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

Order in Council No. XXII of 2002

obligations under section 15(2);

(ii) the applicant will maintain -

(A) if the applicant is a company, shareholders' funds of an amount equal to or exceeding the Reserve Asset Requirement; or

(B) if the applicant is not a company, a security deposit, in a form to be determined by the Commission by condition imposed on the licence under section 7, of an amount equal to or exceeding the Reserve Asset Requirement; 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

Order in Council No. XXII of 2002

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 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 -

- (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^c in

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

Order in Council No. XXII of 2002

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;
- (ii) the provisions of any code issued under this Law; and
- (iii) any matter to which it may have regard under section 9 when considering whether or not to revoke a licence.

(4) The Commission shall not consider an application for a licence which is not accompanied by the appropriate fee prescribed by regulations under section 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

Order in Council No. XXII of 2002

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.

(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, suspension or surrender of the licence.

(3) Except when required by or under subsection (2) to deliver its licence to the Commission, 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.

Order in Council No. XXII of 2002

(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 suspended under section 8, revoked under section 9 or surrendered under section 10.

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.

Order in Council No. XXII of 2002

(3) The Commission may, subject to the provisions of section 41, 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;

Order in Council No. XXII of 2002

- (e) require the removal of any director, controller, manager, partner, employee or authorised insurance representative 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;
- (j) where the licensee has not fully complied with any condition or direction and a notice of suspension or

Order in Council No. XXII of 2002

revocation has been issued to the licensee under section 8 or 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;

(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.

(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 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.

Order in Council No. XXII of 2002

(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 or 9 when considering whether or not to grant an application for a licence or to revoke a licence.

(9) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a licence and the date from which any such condition is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public, 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. (1) The Commission may, subject to the provisions of section 41, by notice in writing served on a licensed insurance manager or licensed insurance intermediary suspend his licence -

(a) at the request of the licensee; or

Order in Council No. XXII of 2002

- (b) in any case in which it appears to the Commission that it has power, pursuant to the provisions of section 9, to revoke the licence.

(2) The suspension of a licence in pursuance of subsection (1) shall be -

- (a) for a period specified by the Commission;
- (b) until the occurrence of an event so specified; or
- (c) until prohibitions or requirements so specified are complied with.

(3) During a period of suspension of a licence in pursuance of subsection (1) -

- (a) the licensee may not act as an insurance manager in or from within the Bailiwick or (as the case may be) carry on, or profess to carry on, business as an insurance intermediary in or from within the Bailiwick; and
- (b) no payments may be made by or to the licensee or any person (including, without limitation, an authorised insurance representative) acting on the licensee's behalf in respect of his so acting as a licensed insurance manager or (as the case may be) so carrying on business

Order in Council No. XXII of 2002

as an insurance intermediary without the prior written approval of the Commission.

(4) In considering whether or not to suspend an insurance manager's or insurance intermediary's licence in pursuance of subsection (1) 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 or 9 when considering whether or not to grant an application for a licence or to revoke a licence.

(5) Where the Commission decides, otherwise than with the agreement of the licensee concerned, to suspend a licence, the Commission shall serve upon the licensee concerned, in accordance with the provisions of section 40, notice in writing of the decision.

(6) The provisions of section 9(3) to (6) shall apply in relation to a decision of the Commission to suspend a licence as they apply in relation to a decision of the Commission to revoke a licence; and references in those subsections (however expressed) to revocation shall include references to suspension.

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 -

Order in Council No. XXII of 2002

- (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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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 section 36 or has become or continued to be a controller, partner or director after being given notice of objection under section 36 or 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

Order in Council No. XXII of 2002

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.

(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;

Order in Council No. XXII of 2002

- (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

Order in Council No. XXII of 2002

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.

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

(6) The Commission may, subject to the provisions of section 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;

Order in Council No. XXII of 2002

- (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) if the name of the licensee would not, immediately after the surrender, comply with the requirements of section 30.

(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.

PART III

GENERAL PROVISIONS AS TO INSURANCE MANAGERS
& INSURANCE INTERMEDIARIES

Directions to licensees

Directions to licensed insurance managers and licensed insurance intermediaries.

11. (1) The Commission may, subject to the provisions of section 41 -

Order in Council No. XXII of 2002

- (a) when serving notice under section 8 or 9 upon a licensee that the Commission has decided to suspend or revoke his licence;
- (b) at any time after such a notice has been served (whether before or after the licence is suspended or 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) Without prejudice to the generality of subsection (1), directions thereunder may -

- (a) require the licensee to take certain steps, to refrain from adopting or pursuing a particular course of action or to

Order in Council No. XXII of 2002

restrict the scope of his business in a particular way;

- (b) prohibit or impose limitations upon the carrying on of business as an insurance manager or (as the case may be) as an insurance intermediary, and other business;
- (c) prohibit the licensee from soliciting business 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, partner, manager, employee or authorised insurance representative.

(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 suspend or revoke his licence; or
- (b) the Commission's decision to suspend or revoke the licence is set aside on appeal under section 43.

Order in Council No. XXII of 2002

(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 licensee 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.

(8) The Commission may give public notice of the imposition, variation or rescission of a direction under subsection (1) and the date from which any such direction is effective; and, in deciding whether or not to do so, the Commission

Order in Council No. XXII of 2002

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.

(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.

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

Order in Council No. XXII of 2002

website.

(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 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) details of any conditions of the licence or directions restricting the acceptance of new business; 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 -

Order in Council No. XXII of 2002

- (i) any grant of a licence under section 4 or any suspension, revocation or surrender of a licence under section 8, 9 or 10; 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) If an addition, erasure or other alteration is made under subsection (3) in consequence of -

- (a) any suspension, revocation or surrender of a licence under section 8, 9 or 10; or
- (b) any change in the insurer or insurers in respect of which a licensed insurance manager is licensed to act;

the Commission shall cause particulars of the addition, erasure or other alteration, as the case may be, to be published in La Gazette Officielle within the period of 28 days next following the date on which the addition, erasure or other alteration is made.

(5) The Commission shall, in January in each year, cause a notice

Order in Council No. XXII of 2002

to be published in La Gazette Officielle stating that the list maintained under subsection (1) is available for inspection at the Commission and that copies of the list are available for purchase.

(6) Without prejudice to the provisions of subsection (4), 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, or a particular insurance manager's or insurance intermediary's licence has been suspended;
- (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.

General requirements for insurance managers

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

Order in Council No. XXII of 2002

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), furnish the Commission with -
 - (i) the names;
 - (ii) the addresses or principal places of business; and
 - (iii) as respects companies, the places of incorporation;of all insurers for which he has, at any time during the financial year concerned, 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

Order in Council No. XXII of 2002

(iii) as respects companies, 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.

(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 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:

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

Order in Council No. XXII of 2002

issuing the authorisation may be a company 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;

Order in Council No. XXII of 2002

- (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.

Order in Council No. XXII of 2002

(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) 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) 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.

Order in Council No. XXII of 2002

(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

Order in Council No. XXII of 2002

(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 -

Order in Council No. XXII of 2002

- (a) any person who is licensed as an insurer under the Insurance Business (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 (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.

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

Order in Council No. XXII of 2002

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

(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).

(4) Except where the context otherwise requires, references in this section, and also references in all Conduct of Business Rules and codes issued under this Part of this Law, to "licensed insurance intermediaries" extend also to licensed insurers and licensed insurance managers when acting as insurance intermediaries.

Order in Council No. XXII of 2002

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.

Annual return of licensee.

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

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

Order in Council No. XXII of 2002

- (a) an up-to-date business plan;
- (b) a list of all authorised insurance representatives;
- (c) in the case of an insurance intermediary, a statement of all insurers with whom the intermediary has placed business in the financial year in question; and
- (d) a certificate signed by a person of a description specified in the regulations confirming -
 - (i) compliance throughout the period covered by the annual return with 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 licensee is licensed under this Law;
 - (ii) that the accounts have been prepared and deposited in accordance with this Law.

(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

Order in Council No. XXII of 2002

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

(3) Without prejudice to the provisions of subsection (2), a licensee which is a company shall forthwith 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 his term of office; or
- (b) if the licensee gives notice to its shareholders of a resolution replacing an auditor at the expiration of his

Order in Council No. XXII of 2002

term of office.

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

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of his term of office; or
- (b) decides to include any qualification as to any matter in his signs a qualified audit report on the accounts of the licensee;

and a notice under paragraph (a) shall contain -

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

(5) The provisions of this section shall apply in relation to a former licensee as they apply in relation to a licensed insurer, but only, subject to the

Order in Council No. XXII of 2002

provisions of subsection (6), for a period of three years from 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 his term of office; or

(b) decides to include any qualification as to any matter in his report on the accounts of the former licensee;

by reason of any fraud of -

(i) the former licensee; or

(ii) any of its directors, managers, controllers, partners, general representatives or employees;

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

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

Order in Council No. XXII of 2002

(86) 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.

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 -

Order in Council No. XXII of 2002

- (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 date; and
 - (ii) its profit or loss for the financial period ending on that date; and
 - (c) shall state the Recognised Accounting Standards adopted.
- (4) In the event of conflict between -
- (a) any requirement of Recognised Accounting Standards; and
 - (b) any requirement of or under this Law (or any Ordinance, regulation or rule under it), including (without limitation) any requirement arising by virtue of any condition or direction imposed under this Law;

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

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

Order in Council No. XXII of 2002

- (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 -

Order in Council No. XXII of 2002

- (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.

(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), 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; and
- (b) such evidence as the Commission may require of adequate professional indemnity insurance cover in respect of the licensee.

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.

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 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.

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

Order in Council No. XXII of 2002

(3) Where an auditors' management letter is issued by a licensed insurer's auditor, a copy of the letter shall be deposited by the auditors with the Commission within a period of four months (or such additional time as the Commission may in any particular case allow) after the close of the financial year to which the auditors' management letter relates.

(4) Where no auditors' management letter is issued by a licensed insurer's auditor in respect of a financial year of the insurer, a statement to that effect, in such form (if any) as the Commission may determine, shall be deposited by the auditor within a period of four months (or such additional time as the Commission may in any particular case allow) after the close of the financial year.

(53) 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 thereunder in their application to that licensee.

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

Order in Council No. XXII of 2002

(75) A licensee which or auditor who 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) 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
- (c) a person of such other description as may be prescribed by regulations of the Commission.

(4) A licensee shall comply with this Law (and any Ordinance,

Order in Council No. XXII of 2002

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 or authorised insurance representative, notify the Commission of the proposed change and obtain the Commission's written approval thereto: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any 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.

Order in Council No. XXII of 2002

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

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)

Order in Council No. XXII of 2002

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;

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

(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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

(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,

Order in Council No. XXII of 2002

1994^d or the Companies (Alderney) Law, 1994^e 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 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

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

^e Order in Council No. XXXIV of 1994.

Order in Council No. XXII of 2002

- (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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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 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;

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

- (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.

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 section 36(1); or
- (b) becomes or continues to be a controller, partner or

Order in Council No. XXII of 2002

director after a notice of objection has been served on him under section 36 or 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 section 36(1) or has become or continued to be such a controller after a notice of objection has been served on him under section 36 or 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;

Order in Council No. XXII of 2002

- (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 section 36 or 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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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.

PART VI
SUPPLEMENTARY MATTERS

Notice of decisions

Notice 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) -

- (a) shall state the grounds of the Commission's decision;
and
- (b) shall give particulars of the right of appeal conferred by section 43.

(2) Where -

- (a) a ground for a decision mentioned in section 4(5), 7(10), 8(5), 9(7), 10(7) or 11(9) is that any criterion of paragraph 3 of Schedule 4 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a condition of a licence, or a direction under section 11(1), requires the removal or replacement of any person as a director, controller, partner, manager, employee, authorised insurance representative or auditor;

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

Representations and appeals

Representations concerning decisions of Commission.

41. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 43, the procedure prescribed in this section shall be followed.

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

- (a) stating that the Commission is proposing to take the decision;
- (b) stating the grounds for the proposed decision;
- (c) setting out particulars of any condition or direction proposed to be imposed, varied or rescinded;
- (d) stating that the person concerned may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine; and
- (e) giving particulars of the right of appeal which would be exercisable under section 43 if the Commission were to take the proposed decision;

Order in Council No. XXII of 2002

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

(3) Where -

- (a) a ground for the proposed decision is that any criterion of paragraph 3 of Schedule 4 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) any proposed condition or direction requires the removal or replacement of any person as a director, controller, partner, manager, employee, authorised insurance representative or auditor;

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to him) giving particulars of the right of appeal which would be exercisable under section 43 if the Commission were to take the proposed decision.

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

(5) The period of 28 days mentioned in subsection (2)(d) may be reduced in any case in which the Commission considers it necessary to do so in the

Order in Council No. XXII of 2002

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; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then the procedure prescribed in this section may be dispensed with altogether.

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.

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

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere);
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place; or
- (c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person

Order in Council No. XXII of 2002

concerned 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 aggrieved by a decision of the Commission -
- (a) to refuse an application by him for a licence;
 - (b) to suspend or revoke his licence;
 - (c) to impose, vary or rescind any condition in respect of his licence;
 - (d) not to allow the surrender of his licence to be withdrawn, or to refuse consent to the surrender of his licence;
 - (e) to give him directions under section 11, 39, 45(6) or 61 or to vary or rescind any direction so given;
 - (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;

Order in Council No. XXII of 2002

- (h) to omit, pursuant to the provisions of section 42(2), any matter from a statement of reasons given to him;
- (i) to serve a notice on him under section 45(1), (2), (3) or (7), 46(1) or (3) or 47(1);
- (j) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;

may appeal to the Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any criterion of paragraph 3 of Schedule 4 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as a director, controller, partner, manager, employee, authorised insurance representative or auditor;

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

Order in Council No. XXII of 2002

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

(4) The grounds of an appeal under this section shall be that the decision was ultra vires or was an unreasonable exercise of the Commission's powers.

(5) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the notice of the Commission's decision or, as the case may be, the notice of objection; and

(b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

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

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

Order in Council No. XXII of 2002

- (b) make such other order as the Court considers just;

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989^f.

- (7) On an appeal under this section the Court may -

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

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

(8) On an appeal under this section against a decision described in subsection (1)(c) or (e) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition or direction in question, or the variation or rescission thereof, pending the determination of the appeal.

(9) For the purposes of determining an appeal under this section 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 Court may examine the information the disclosure of which the Commission considers would be prejudicial; and unless the Court orders otherwise the information shall not, pending the

^f O.R.C. No. VII of 1989.

Order in Council No. XXII of 2002

determination of the appeal, be disclosed to the appellant or any person representing him.

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

(a) where the person described in subsection (1), (2) or (3) -

(i) is an Alderney company; or

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

the Court of Alderney;

(b) where that person is not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Sark, the Court of the Seneschal;

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

(11) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) shall lie to the Court of Appeal on a question of law.

Obtaining of information by Commission

Site visits.

44. (1) The Commission shall, at such times, intervals and places as it thinks fit, and -

- (a) with a view to the performance of its supervisory and regulatory 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, policyholders or potential policyholders, clients (in the case of an insurance intermediary) or the reputation of the Bailiwick as a finance centre;

make arrangements with any licensee for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the licensee or any associated party thereof (or any person acting for or on behalf of the licensee or associated party) for the purpose of ascertaining whether or not the licensee or associated party is complying with the provisions of this Law or any Ordinance, regulation, rule, code, condition or direction under it.

(2) In the course of a site visit the Commission or any person acting for and on behalf of the Commission for the purposes of the site visit -

- (a) may request the provision of such information and documents, in such form; and

Order in Council No. XXII of 2002

(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 purpose mentioned in subsection (1) or relevant to the licensing of the licensee.

(3) Site visits may take place at any or all of the premises where business is conducted or records are maintained by the licensee or associated party and are not limited to premises in the Bailiwick.

(4) Where a licensee or associated party 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 making, timing or scope of a site visit, 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.

(5) The provisions of this section are in addition to the other provisions of or under this Law.

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 -

Order in Council No. XXII of 2002

- (a) at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions;
 - (b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission on, or on any aspect of, any matter in relation to which the Commission may require information under paragraph (a).
- (2) The Commission may, by notice in writing served on a licensee-
 - (a) require him to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified;
 - (b) require him to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify;

being information or documents reasonably required by the Commission for the performance of its functions.

Order in Council No. XXII of 2002

(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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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 may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (9) or section 64(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(11) A notice under subsection (1), (2), (3) or (7) shall give particulars of the right of appeal conferred by section 43.

Investigations by inspectors.

46. (1) The Commission may, in relation to any licensee, if it considers it desirable to do so in the interests of -

- (a) the public, the licensee'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 licensee's

Order in Council No. XXII of 2002

business or any particular aspect of that business;

or

(ii) the ownership or control of the licensee;

and the Commission shall give notice in writing of the appointment to the licensee 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 licensee 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 licensee 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 licensee or party being so investigated, or who has been appointed to make a report in respect of such a licensee 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 licensee or party -

(a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody

Order in Council No. XXII of 2002

or power relating to that licensee 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 licensee 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.

Order in Council No. XXII of 2002

(7) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 64(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(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 licensee (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 licensee 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 licensee 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.

Order in Council No. XXII of 2002

(11) The provisions of this section shall apply in relation to a former licensee as they apply in relation to a licensee, but only in connection with the business, ownership or control of the former licensee -

- (a) at a time when he was a licensee;
- (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.

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

Order in Council No. XXII of 2002

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 may not be used in evidence against him except -

Order in Council No. XXII of 2002

- (a) in proceedings for an offence under subsection (3) or section 64(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(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

Order in Council No. XXII of 2002

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;

Order in Council No. XXII of 2002

- (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);

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

- (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) -

Order in Council No. XXII of 2002

(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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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.

Order in Council No. XXII of 2002

(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 under a warrant granted under section 48 may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 64(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

Legal professional privilege, liens and duties of confidentiality.

50. (1) Nothing in -

Order in Council No. XXII of 2002

(a) section 44, 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 44, 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 44, 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) to whose premises a site visit under section 44 has been or is to be made or who knows or has reasonable grounds to suspect that the Commission has requested or is likely to request that arrangements for such a site visit be made; or
- (b) upon whom a notice under section 45, 46 or 47 has been served or who knows or has reasonable grounds to suspect -
 - (i) that such a notice is likely to be served on him; or
 - (ii) that an inquiry or investigation is being or is likely to be carried out under section 45, 46 or 47;

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect -

(A) would be inspected or requested during

Order in Council No. XXII of 2002

such a site visit or are or would be relevant thereto;

(B) are or would be specified in such a notice;
or

(C) are or would be relevant to such an inquiry or investigation;

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from the persons carrying out such an inquiry or investigation.

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

Order in Council No. XXII of 2002

- (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.

Order in Council No. XXII of 2002

(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

Order in Council No. XXII of 2002

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.

Order in Council No. XXII of 2002

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

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

(5) In this section "**the Court**" means -

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal;

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

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform

(Miscellaneous Provisions) (Guernsey) Law, 1987^g; 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 entitled to take that action in relation to that property, he shall not be liable to any

^g Ordres en Conseil Vol. XXX, p. 145.

Order in Council No. XXII of 2002

person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(3) In this section "**the Court**" means -

- (a) where the person against whom the direction under subsection (1) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal;
- (b) in any other case, the Royal Court.

Provision as to codes of practice, etc.

55. (1) The Commission, after consultation with -

- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark; and
- (b) such other persons as appear to the Commission to be appropriate including, without limitation, persons representative of that part of the Bailiwick's financial services industry which carries on business regulated by this Law;

may (without prejudice to any other power conferred by this Law as to the making of

Order in Council No. XXII of 2002

codes) issue such codes of practice as the Commission thinks necessary -

(i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to policyholder 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;

(ii) generally for the purposes of this Law.

(2) A code issued under this Law may contain such transitional or savings provisions as appear to the Commission to be necessary or expedient.

(3) The Commission may, after consultation as mentioned in subsection (1) in the case of a code issued under that subsection, revise the whole or any part of a code issued under this Law and issue that revised code.

(4) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision of a code issued under this Law shall not of itself render him liable to any criminal proceedings; but-

Order in Council No. XXII of 2002

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

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

(ii) the regulatory Laws;

may take the provision of the code and the contravention thereof into account in determining whether and in what manner to exercise those powers; and

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

Disclosure of information

Restrictions on disclosure of information.

56. (1) Subject to the provisions of section 57 -

(a) no person who under or for the purposes of this Law

Order in Council No. XXII of 2002

receives information relating to the business or other affairs of any person;

- (b) no person who obtains any such information directly or indirectly from a person who has so received it;

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence.

Cases where disclosure is permitted.

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

Order in Council No. XXII of 2002

or assisting the Commission to discharge its functions conferred by or under this Law;

- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions conferred by or under this Law or would otherwise be in the interest of the public;
- (d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation (actuarial or otherwise) or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought;
- (e) the disclosure by the Commission of information in the interests of clients or policyholders or in the public interest;
- (f) the disclosure of information for the purpose of enabling

Order in Council No. XXII of 2002

or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions;

(g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any Ordinance, regulation or rule made under it;

(h) the disclosure of information -

(i) for the purposes of the investigation, prevention or detection of crime; or

(ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings;

whether under this Law or otherwise;

(i) the disclosure of information in connection with any other proceedings arising out of this Law;

(j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of a licensee or former licensee or by a person nominated or approved for the purposes of section 3(5) or 45(1)(b) or appointed under

Order in Council No. XXII of 2002

section 46;

- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under sections 44 to 50 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable;
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere;
- (m) the disclosure of information to a person responsible for a scheme for compensating clients or policyholders (whether in the Bailiwick or elsewhere) -
 - (i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge its functions; and
 - (ii) if the recipient has given to the Commission a written undertaking that the information will not

Order in Council No. XXII of 2002

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 section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^h.

Information supplied to Commission by relevant overseas authority.

58. (1) Section 56 applies also in relation to information supplied to the Commission for the purposes of its functions conferred by or under this Law by a relevant supervisory authority in a country outside the Bailiwick.

(2) Information described in subsection (1) may be disclosed only -

- (a) with the consent of the persons whose consent is referred to in section 56(1); or
- (b) for the purposes or in the circumstances described in section 57(a), (b) or (h).

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

^h 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.

Order in Council No. XXII of 2002

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),

Order in Council No. XXII of 2002

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.

Order in Council No. XXII of 2002

(5) This section applies in relation to the auditor of a former licensee as it applies in relation to the auditor 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;

Order in Council No. XXII of 2002

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.

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

Order in Council No. XXII of 2002

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) -

(a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise);

(b) make provision as to the matters which must or which

Order in Council No. XXII of 2002

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 contain any or all of the following -

Order in Council No. XXII of 2002

- (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.
- (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
 - (c) if given orally, shall be confirmed by the Commission in writing not later than the next working day.

Order in Council No. XXII of 2002

(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.

(8) Subject to subsection (9), a person who -

(a) issues or causes to be issued an advertisement in contravention of regulations under this section or who otherwise contravenes any provision of such regulations;
or

(b) issues or causes to be issued an advertisement in contravention of a direction under this section or who otherwise contravenes any provision of such a direction;

is guilty of an offence.

(9) A person whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under subsection (8) if he proves that -

(a) he received the advertisement for publication in the ordinary course of his business;

(b) the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control; and

Order in Council No. XXII of 2002

- (c) he 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 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;
- (b) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited; and
- (c) the issue of an advertisement containing an invitation -
 - (i) to enter into or offer to enter into a contract with;
or
 - (ii) to become a client of or use services provided by;

a person specified in the advertisement shall, unless the contrary is proved, be presumed to have been caused by that person.

PART VII
GENERAL PROVISIONS

Ordinances and regulations, etc

Ordinances, regulations, rules and codes.

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.

(3) Any Ordinance, regulation, rule or code under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, as the case may be, hereunder;

Order in Council No. XXII of 2002

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance, regulation or rule -

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance, regulation or rule;

(ii) provision amending or modifying any provision of this Law.

(4) Any power conferred by this Law to make any Ordinance, regulation, rule or code may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

Order in Council No. XXII of 2002

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(5) The Committee (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 80), consult the General Purposes and 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.

(6) The requirement imposed by subsection (5) to consult the General Purposes and 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.

Regulations: consultation with Committees and laying before States.

Order in Council No. XXII of 2002

63. Regulations made under this Law or under an Ordinance made under this Law -

- (a) where made by the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark;
- (b) where made by the Committee, 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 General Purposes and Finance Committee of the Chief Pleas of Sark;
- (c) whether made by the Commission or by the Committee, 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.

Criminal Proceedings

Offences as to false or misleading information, etc.

64. (1) If a person -

Order in Council No. XXII of 2002

- (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;

Order in Council No. XXII of 2002

- (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

Order in Council No. XXII of 2002

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);

Order in Council No. XXII of 2002

is guilty of an offence.

Penalties.

65. (1) A person guilty of an offence under section 1(4), 2(2), 17(3), 30(3), 45(9), 46(6), 47(3), 49(6), 51, 56(2) or 64(1) or (3) shall be liable -

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

(2) A person guilty of an offence under any other section of this Law shall be liable -

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(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

Order in Council No. XXII of 2002

Alderney Law, 1987ⁱ and section 23 of the Reform (Sark) Law, 1951^j.

(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.

Criminal proceedings against unincorporated bodies.

66. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of 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 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 -

ⁱ Ordres en Conseil Vol. XXX, p. 37; section 13 was amended by Orders in Council No. VI of 1989 and No. IX of 1995.

^j 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.

Order in Council No. XXII of 2002

- (a) any director thereof or any other officer thereof who is bound to fulfil any duty whereof the offence is a breach;
- (b) any partner thereof (in the case of a partnership); or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b);

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

Criminal liability of directors, etc.

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.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Defence of due diligence.

68. In any proceedings for an offence under this Law, or any Ordinance, regulation or rule made under it, it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission

Order in Council No. XXII of 2002

of such an offence by himself and by any person under his control.

Jurisdiction.

69. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under this Law, or any Ordinance, regulation or rule made under it, may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

Liability of States

Exclusion of liability.

70. No liability shall be incurred -

- (a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
- (b) by the Commission or Her Majesty's Greffier; or
- (c) by any member, officer or servant of any of the aforesaid;

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under this Law, or any Ordinance, regulation or rule made under it, unless the thing is done or omitted to be done in bad faith.

Miscellaneous

Order in Council No. XXII of 2002

Fees.

71. (1) The Commission may by regulation prescribe fees to be payable to the Commission in connection with such of the matters specified in subsection (2) as may be prescribed by the regulations; and regulations under this section may provide for the payment of interest or penalties in the event of default in the due payment of fees.

(2) The matters referred to in subsection (1) are -

- (a) applications for, and the grant of, licences;
- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification as required by or under section 13, 15, 19, 21, 24, 25, 26 or 45;
- (c) the making of a request to the Commission -
 - (i) to allow the surrender of a licence to be withdrawn;
 - (ii) to consent to the surrender of a licence;
 - (iii) under section 31(1) for permission for the purposes of section 2, 30, 34 or 35;
- (d) such other matters as the States may by Ordinance

Order in Council No. XXII of 2002

prescribe for the purposes of this section.

(3) Regulations under this section may also prescribe fees to be payable to the Commission annually or periodically, specifying the dates, times, intervals or occasions at which or on which payment is to be made.

(4) Fees payable pursuant to regulations under this section -

(a) shall be recoverable from -

(i) the person making the application, request or deposit concerned or giving the notification or information concerned;

(ii) the licensee in respect of whose licence the fee is payable; or

(iii) the person or body specified by the regulations;

as a civil debt due to the Commission;

(b) are not refundable;

(c) shall, where appropriate, be proportioned in such manner as may be prescribed by the regulations.

Service of notices and documents.

Order in Council No. XXII of 2002

72. (1) Any document other than a summons to be given or served under this Law or any Ordinance, regulation or rule made under it may be given to or served upon -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
- (b) a company with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;
- (c) a company without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick;
- (d) an unincorporated body, by being given to or served on any partner, member of the committee or other similar governing body, manager or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere;

Order in Council No. XXII of 2002

- (e) the Committee, by being left at, or sent by post or transmitted to, its principal office in the Bailiwick;
- (f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick;
- (g) a licensed insurance manager, by being given to or served on him in accordance with the preceding paragraphs of this subsection or by being left at, or sent by post or transmitted to, his address for service under section 14;

and in this section -

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post;
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication; in which event the document shall be regarded as served when it is received; and

Order in Council No. XXII of 2002

- (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.

(2) If a person notifies the Commission of an address for service within the Bailiwick for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Committee or the Commission or its Chairman under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian; and if there is no guardian, the Commission (or, with leave of the Court, any other person) may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law; and in this subsection "**the Court**"

Order in Council No. XXII of 2002

means -

- (a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal;
- (b) in any other case, the Royal Court.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting;
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting;

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended^k.

- (8) Service of any document sent by post shall be proved by

^k Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

Order in Council No. XXII of 2002

showing the date of posting, the address thereon and the fact of prepayment.

Verification of information.

73. The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement imposed by or under any provision of this Law or any Ordinance, regulation or rule under it shall be verified in such manner as the Commission may reasonably specify; and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been provided in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

Evidence.

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 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.

Order in Council No. XXII of 2002

(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 General Purposes and 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.

(3) Except where the context otherwise requires, any reference in this Law to an enactment includes a reference thereto as 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, 1948¹ shall apply to the interpretation of this Law (and of any Ordinance, regulation or rule made under it) 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, 1994 and the Companies (Enabling Provisions (Guernsey) Law, 1996^m;
- (b) the Companies (Alderney) Law, 1994;
- (c) the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Laws, 1936 to 1983ⁿ;
- (d) the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950^o;
- (e) the Surf-Riding (Longboards) (Compulsory Third-Party

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

^m Order in Council No. XII of 1996.

ⁿ 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.

^o Ordres en Conseil Vol. XIV p. 209; Vol. XVIII, p. 81; Vol. XXIII, p. 364.

Order in Council No. XXII of 2002

Insurance) (Guernsey) Law, 1969^P;

- (f) the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972^Q;
- (g) the regulatory Laws;
- (h) the Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996^R;
- (i) the Steam Boilers (Insurance) Ordinance, 1952^S;
- (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.

77. (1) If, pursuant to any requirement imposed by or under this Law, any document or information is published in La Gazette Officielle -

^P Ordres en Conseil Vol. XXII, pp. 2 and 53; Vol. XXIV, p. 250.

^Q Ordres en Conseil Vol. XXIII, p. 515; Vol. XXIV p. 250; Recueil d'Ordonnances Tome XXVI, p. 311.

^R Order in Council No. XIII of 1996.

^S Recueil d'Ordonnances Tome X, p.311.

Order in Council No. XXII of 2002

- (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

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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.

Citation.

79. This Law may be cited as the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

Commencement.

Order in Council No. XXII of 2002

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 contracts of insurance on human life or contracts to pay annuities on human life.

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).

Order in Council No. XXII of 2002

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

Order in Council No. XXII of 2002

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 5 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 to form an opinion as to the matters on which his opinion is required by paragraph 2 of this Schedule to be expressed in his report.

Auditor's report.

2. The report of an auditor made pursuant to section 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 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

Order in Council No. XXII of 2002

transaction in the normal course of business, which has, in the auditor's opinion, resulted in the balance sheet showing a situation materially different from that which would otherwise have obtained and which is not adequately disclosed in the accounts; and

- (c) declare any respect in which, in the auditor's opinion, the information given in an annual return of the licensee prepared pursuant to section 20 is inconsistent with the accounts of the licensee for the financial year to which that annual return relates.

SCHEDULE 3

Section 75(1)

GLOSSARY OF EXPRESSIONS

In this Law, unless the context requires otherwise -

“action” includes inaction and failure to act;

"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;

“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 an Alderney company or an unincorporated body whose principal place of business is in Alderney;

"Alderney company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994;

Order in Council No. XXII of 2002

"**annuities on human life**" does not include retirement annuity trusts, superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;

“associate”, in relation to any person, means -

- (a) the spouse, child or stepchild of that person;
- (b) any person who is an employee of, or who is in partnership with, that person;
- (c) any body of which that person is a director;
- (d) where that person is a company -
 - (i) any director or employee of that company;
 - (ii) any subsidiary of that company; and
 - (iii) any director or employee of any such subsidiary;
- (e) where that person is an unincorporated body, any director of that body; and
- (f) if that person has with some other person an agreement

Order in Council No. XXII of 2002

or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person;

"associated party", in relation to any person, means -

- (a) any person who is in partnership with that person;
- (b) any company of which that person is a controller;
- (c) any body of which that person is a director;
- (d) where that person is a company -
 - (i) a holding company, subsidiary or related company of that person;
 - (ii) a subsidiary or related company of a holding company of that person;
 - (iii) a holding company of a subsidiary of that person;
or
 - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the

Order in Council No. XXII of 2002

exercise of, more than 50% of the voting power
in general meeting;

and where, pursuant to the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body is an associated party in relation to that first-mentioned person or body:

Provided always that the Commission may by regulation amend the definition of the expression "associated party";

"auditor" means a person who is qualified for appointment as an auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994 and who is approved by the Commission to audit the accounts of licensees;

“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 section 2(6);

"Bailiff" has the meaning given by section 48(4);

Order in Council No. XXII of 2002

“Bailiwick” means the Bailiwick of Guernsey;

“Bailiwick body” means a Guernsey body, an Alderney body or a Sark 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;

"body" means a company or an unincorporated body;

"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

Order in Council No. XXII of 2002

(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, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the company and, in relation to a company 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;

"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;

"code of conduct" means the code of conduct for authorised insurance representatives issued by the Commission under section 18;

"Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey)

Order in Council No. XXII of 2002

Law, 1987^t;

"Committee" means the States of Guernsey Advisory and Finance Committee;

"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;

"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 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;

^t Ordres en Conseil Vol. XXX, p. 243.

Order in Council No. XXII of 2002

“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;

"country" includes any 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^u;

"Court of the Seneschal" means the Court of the Seneschal of Sark;

"Current Personal Questionnaire" means a questionnaire, in a form to be determined from time to time by the Commission -

- (a) which was lodged with the Commission not more than 5 years before the last calendar year end; and

^u

Ordres en Conseil Vol. XVIII. p.315.

Order in Council No. XXII of 2002

(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;

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) of the latter's suitability to be a person of a description set out in section 27(3);

"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;

"documents" includes information recorded in any form (including, without limitation, in an electronic form) and -

(a) in relation to information recorded otherwise than in

Order in Council No. XXII of 2002

legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form;

- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language;

"domestic business" means insurance business, excluding reinsurance business -

- (a) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person who has his ordinary place of residence in the Bailiwick at the time the contract is effected against any kind of risks except risks in relation to property; or
- (b) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person against risks of any kind in relation to -
 - (i) real property situated in the Bailiwick;
 - (ii) personal property which at the time the contract is effected is held or based in the Bailiwick or which is deemed in accordance with regulations

Order in Council No. XXII of 2002

made by the Commission under this paragraph to
be so held or based; or

- (iii) personal property which is in transit to or from
the Bailiwick;

"employee" means an individual who has entered into or who works
under (or, where the employment has ceased, who worked under) a contract of
employment, and cognate expressions shall be construed accordingly;

"enactment" includes an enactment of the Parliament of the United
Kingdom and a Measure of the Scottish, Welsh or Northern Irish Assembly;

"equity share capital" means, in relation to a company, its issued share
capital excluding any part thereof which, as respects neither dividends nor
capital, carries any right to participate beyond a specified amount in a
distribution;

"financial 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;

Order in Council No. XXII of 2002

and also includes any person described in section 78(4) or (5);

"general business" means insurance business other than long term business;

“general public” includes ~~means~~ any client ~~other than a large 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; **“Guernsey body”** means a Guernsey company or an unincorporated body whose principal place of business is in Guernsey;

“Guernsey company” means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"holding company" has the meaning given in Schedule 5, subject to any regulations under paragraph 5 of that Schedule;

“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;

Order in Council No. XXII of 2002

"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

Order in Council No. XXII of 2002

funds (other than funds solely for the benefit of his own officers or employees and their dependants or, in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company) which are combined with contracts of insurance;

- (c) the effecting or carrying out of contracts to pay annuities on human life;

and for the purposes of this Law a person shall not be considered to carry on insurance business solely by reason of the fact that he -

- (A) is a member of the Society of Lloyd's;
- (B) effects or carries out a contract of reinsurance with a licensed insurer in the Bailiwick (unless his principal place of business is in the Bailiwick); or
- (C) invests in shares or in some other way participates in the results of an insurer;

Provided always that the Commission may by regulation amend this definition of the expression "insurance business";

Order in Council No. XXII of 2002

“insurance intermediary” has the meaning given by section 2(5);

"insurance manager" has the meaning given by section 1(3);

“insurance representative” has the meaning given by section 2(6);

"insurer" means a person carrying on, or holding himself out as carrying on, insurance business;

“intermediary” means an insurance intermediary; **“large client”** means a body or organisation which fulfils such criteria as the Commission may from time to time specify and publish by rules made hereunder

"licence" means a licence granted under section 4;

“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 (Bailiwick of Guernsey) Law, 2002;

“licensee” means a licensed insurance manager or a licensed insurance

Order in Council No. XXII of 2002

intermediary;

"list" , in section 12, means the list of licensed insurance managers and licensed insurance intermediaries required to be kept under that section;

"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;

"name", in sections 30 to 35, includes trading name;

"officer of police" means a member of the salaried police force of the Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^v and -

^v

Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

Order in Council No. XXII of 2002

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987^w;
- (c) in relation to Sark, the Constable and the Vingtenier;

"partnership" has the meaning given by section 1 of the Partnership (Guernsey) Law, 1995^x, and cognate expressions shall be construed accordingly;

"person" includes a body of persons (whether a company or an unincorporated body);

"policy" -

- (a) in relation to long term business, includes an instrument

^w Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1998; and No. I of 2000; section 15 has been repealed and replaced by the Government of Alderney (Amendment) Law, 2000.

^x Order in Council No. VIII of 1995.

Order in Council No. XXII of 2002

evidencing a contract to pay an annuity upon human life;

- (b) in relation to insurance business of any other description, includes a policy under which there is for the time being an existing liability already accrued or under which a liability may accrue; and
- (c) in relation to capital redemption contracts, includes any policy, bond, certificate, receipt or other instrument evidencing the contract with the insurer;

"policyholder" means the person who for the time being is the legal holder of the policy securing the contract with the insurer or, in relation to capital redemption business, the person who for the time being is the legal holder of the policy, bond, certificate, receipt or other instrument evidencing 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;

"public" means the public in the Bailiwick or elsewhere;

Order in Council No. XXII of 2002

“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 (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 (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 for the protection of the interests of the licensee's clients or for the protection of policyholders or the reputation of the Bailiwick as a finance centre,

Order in Council No. XXII of 2002

addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency);

"Registrar" means the Clerk of the Court of Alderney, exercising functions under the Companies (Alderney) Law, 1994;

"regulations" means regulations made by the Commission or by the Committee under this Law or under any Ordinance made under this Law;

"regulatory Laws" means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987^y;
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^z;
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^{aa};

^y Ordres en Conseil Vol. XXX, p. 281.

^z Order in Council No. XIII of 1994.

^{aa} Order in Council No. I of 2000.

Order in Council No. XXII of 2002

- (d) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission;

"related company", in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest; and for the purposes of this Law -

- (a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company;
- (b) where -
 - (i) a company holds a qualifying capital interest in another company; and
 - (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;

Order in Council No. XXII of 2002

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above, unless the contrary is shown; and

- (c) in paragraph (b) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a);

"**relevant 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^{bb} or under the regulatory Laws; or
- (b) such other functions as the Commission may by regulation prescribe;

"**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

^{bb} 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.

Order in Council No. XXII of 2002

Court; **“Sark body”** means any body, other than a Guernsey company or an Alderney company, whose principal place of business is in Sark;

“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;

“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;

“States” means the States of Guernsey;

“subsidiary company” has the meaning given in Schedule 5, subject to any regulations under paragraph 5 of that Schedule, and **“subsidiary”** has the same meaning.

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 with prudence, professional skill and integrity appropriate to the nature and scale of his activities and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

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

Economic benefit.

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

Fit and proper persons.

Order in Council No. XXII of 2002

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

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

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of clients or policyholders (or potential clients or policyholders) of the applicant or licensee, the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position;
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development;

Order in Council No. XXII of 2002

- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken;
- (f) his procedures for the vetting of clients and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991^{cc};
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{dd};
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^{ee}; and
 - (iv) any other enactment prescribed for the purposes hereof by regulation of the Commission.

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

^{cc} Order in Council No. III of 1991.

^{dd} Order in Council No. VIII of 1999.

^{ee} Order in Council No. VII of 2000.

Order in Council No. XXII of 2002

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under this Law, the regulatory Laws or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^{ff}), banking, insurance, investment or other financial services; or
 - (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise

^{ff}

Order in Council No. I of 2000.

Order in Council No. XXII of 2002

improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law;

- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Business to be directed by at least two individuals.

4. (1) At least two individuals of appropriate standing and experience shall, subject to the provisions of subparagraph (2), effectively direct the business of the applicant or licensee.

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

Position of board of directors.

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

- (a) which is a Guernsey company or an Alderney company;
and
- (b) which wishes to be licensed under section 4 or (as the

Order in Council No. XXII of 2002

case may be) which is licensed under section 4 as an insurance manager or insurance intermediary;

the directors shall include at least one director -

- (i) who is not an associate (other than a director) of, or associated party (other than a director) in relation to, the company; and
- (ii) who is not responsible for the management of the company's business.

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

Business to be conducted in prudent manner.

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

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

- (a) a capital base -

Order in Council No. XXII of 2002

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

(ii) of an amount and nature sufficient to safeguard the interests of his clients and policyholders, having regard to any factors appearing to the Commission to be relevant; and

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

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

(a) the relationship between his liquid assets and his actual and contingent liabilities;

(b) the times at which those liabilities will or may fall due and his assets will mature; and

(c) any other factors appearing to the Commission to be relevant;

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

Order in Council No. XXII of 2002

providing liquidity within a reasonable period.

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

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

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

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

Order in Council No. XXII of 2002

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

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

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

Power to make regulations.

7. The Committee may 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 -

Order in Council No. XXII of 2002

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power;
- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company;
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another -

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it:
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable -
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity);
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

Order in Council No. XXII of 2002

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded;
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The 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.