

# ORDER IN COUNCIL

**XVIII**  
**2008**

ratifying a Projet de Loi

ENTITLED

## **The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007**

(Registered on the Records of the Island of Guernsey  
on the 30th July, 2008.)



---

2008

# ORDER IN COUNCIL



## IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

30<sup>th</sup> day of July, 2008 before John Russell Finch, Esquire, Lieutenant Bailiff;  
present:- David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward  
Francis Le Poidevin, Alan Cecil Bisson, The Reverend Peter Gerald Lane, Michael  
Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara  
Jean Bartie, David Osmond Le Conte, John Ferguson and Stephen Murray Jones,  
Esquires, Jurats.

The Lieutenant Bailiff having this day placed before the  
Court an Order of Her Majesty in Council dated 9<sup>th</sup> July 2008 approving and ratifying a  
Projet de Loi entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment)  
Law, 2007”, THE COURT, after the reading of the said Order in Council and after having  
heard Her Majesty’s Comptroller 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 Greffier of the Court of  
Alderney for registration on the records of that Island.



*At the Court at Buckingham Palace*

THE 9th DAY OF JULY 2008

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:

"That, in pursuance of their Resolutions of 27th July 2006 and 25th July 2007, the States of Deliberation at a meeting on 12th December 2007 approved a Projet de Loi entitled The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 9th January 2008 considered the Projet de Loi when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 16th January 2008 considered the Projet de Loi when a Resolution was passed agreeing to the application to Sark. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, and to order that it shall have force of law in the 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.

*Judith Simpson*

# PROJET DE LOI

ENTITLED

## **The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> July, 2006<sup>a</sup> and the 25<sup>th</sup> July, 2007<sup>b</sup>, 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.

### **Amendment of Law of 1987.**

1. The Protection of Investors (Bailiwick of Guernsey), Law, 1987, as amended<sup>c</sup> ("**the Law**") is further amended as follows.

2. In the arrangement of sections to the Law -

(a) after the entry relating to section 2 insert the following subheading and entry -

*"Duty of Commission"*

---

<sup>a</sup> Article XIX of Billet d'État No. XIII of 2006.

<sup>b</sup> Articles IV and V of Billet d'État No. XIX of 2007.

<sup>c</sup> Ordres en Conseil Vol. XXX, p. 281, amended by Vol. XXX, p. 243, Vol. XXXI, p. 278, Vol. XXXII, p. 324, No. XIII of 1994, No. XII of 1995, No. II of 1997, No. XVII of 2002, and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324, Tome XXVI, p. 333, Ordinances X and XX of 1998, and No. XXXIII of 2003.

2A. Commission to have regard to objectives.",

(b) in the heading to Part II after "authorisation" insert "or registration",

(c) for the entries relating to sections 8, 9, 11, 14, 20 and 23 and Schedules 3 and 4 substitute the following entries -

"8. Authorisation or registration of collective investment schemes."

"9. Imposition of conditions on authorisations or registrations."

"11. Revocation or suspension of authorisation or registration."

"14. Licensing, authorisation and registration rules."

"20. Authorised or registered collective investment scheme rules."

"23. Regulations limiting validity of licences, authorisations or registrations."

"Schedule 3: Requirements for authorised or registered collective investment schemes."

"Schedule 4: Minimum criteria for licensing.",

- (d) after the entry relating to section 27D insert the following entry -

"27E. Investigations by inspectors.",

- (e) for the subheading "Winding up etc." substitute "Intervention, administration and winding up",

- (f) before the entry relating to section 28 insert the following entry -

"28AA. Intervention and administration.",

- (g) after the entry relating to section 41H insert the following entries -

*"Assistance to relevant overseas authorities*

- 41I. Investigations etc. in support of relevant overseas authority.

*Financial penalties and offences*

- 41J. Powers of Royal Court to impose financial penalty for non-compliance.

- 41K. Offences.

*Powers to investigate criminal offences*

41L. Powers of investigation.

41M. Disclosure.

41N. Offences as to "tipping off." And

- (h) after the entry relating to section 42 insert the following entry-

"42A. Power of States to amend Law by Ordinance.".

3. After section 2 of the Law insert the following subheading and section -

*"Duty of Commission*

**"Commission to have regard to objectives.**

**2A.** In carrying out its functions under this Law the Commission must have regard to the objectives of -

- (a) protecting -

(i) investors,

(ii) the public, and

(iii) the reputation of the Bailiwick as a financial centre,

- (b) ensuring that markets for controlled investments are fair, efficient and transparent, and



- (c) reducing risks to the financial system in the Bailiwick."

4. For section 4(3) of the Law, substitute the following subsections -

"(3) The Commission shall not grant an application for a licence unless satisfied that the criteria specified in Schedule 4 are fulfilled -

- (a) in relation to the applicant or licensee, and
- (b) in relation to any person who is or is to be a director, controller, manager or partner of the applicant.

(4) In considering whether or not the criteria specified in Schedule 4 are so fulfilled, the Commission -

- (a) shall take into account such written guidance and shall act in accordance with such written directions as may be given by the Committee under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 in relation to controlled investment business, and
- (b) may take into account -
  - (i) the provisions of any code issued under section 41B, and

- (ii) any matter to which it may have regard under section 6 when considering whether or not to cancel or suspend a licence.

(4) The Commission may refuse an application for a licence which is not accompanied by the fee prescribed by regulations under section 3(1)(g) or which is otherwise not made in accordance with the provisions of this Law."

**5.** In section 5 of the Law -

- (a) in subsection (2)(b)(ii) the word "open-ended" is repealed, and
- (b) after subsection (2), insert -

"(3) 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 6 when considering whether or not to grant an application for a licence or to cancel or suspend a licence."

**6.** In the heading to Part II of the Law after "authorisation" insert "or registration".

**7.** In the following provisions of the Law -

- (a) sections 7, 8(1), 8(2), 8(4), 8(5)(a) and (d), 9 to 11, 12(1), 14(2)(e), 20(1) to (3), 22(1)(c) and 27A,
- (b) the definitions of "**specified class**", "**designated manager**" and "**designated trustee or custodian**" in section 44(1), and
- (c) paragraph 1 of Schedule 3,

for each reference to an "authorised" collective investment scheme substitute a reference to an "authorised or registered" collective investment scheme.

**8.** In sections 8(5), 9(1), 11 and 28(1) of the Law for each reference to "an authorisation" substitute "an authorisation or registration".

**9.** In section 8 of the Law -

- (a) for the heading substitute -

**"Authorisation or registration of collective investment schemes."**

- (b) for subsection (3)(a) substitute the following paragraph -

"(a) if it appears to the Commission that the scheme satisfies the requirements referred to in subsection (4) of this section and subject to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, grant the application and issue -

- (i) in the case of an application for authorisation,

an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class,

- (ii) in the case of an application for registration, a registration declaring that the scheme is a registered collective investment scheme of a specified class, or ".

- (c) in subsection (5)(c) at the beginning insert "in the case of an authorised or registered open-ended collective investment scheme,",

- 10. For the heading to section 9 of the Law substitute -

**"Imposition of conditions on authorisations or registrations."**

- 11. In section 11 of the Law -

- (a) for the heading substitute -

**"Revocation or suspension of authorisation or registration."**,

- (b) in paragraphs (a) and (c) after the words "designated manager" insert "or, in the case of an authorised or registered open-ended collective investment scheme", and
- (c) in paragraph (d) after "the authorisation" insert "or registration".

**12.** In section 12(3)(a) of the Law after the words "apply to" insert "both authorised and registered collective investment schemes or to either of such schemes, to".

**13.** In sections 14(2)(a) and (d) and 22(1)(a) of the Law for the words "or authorisation" substitute ", authorisation or registration".

**14.** In section 14 of the Law -

(a) for the heading substitute -

**"Licensing, authorisation and registration rules."**

(b) in subsections (1) and (2)(b) and (c) for the words "and authorisations" substitute ", authorisations and registrations."

**15.** In section 18 of the Law -

(a) in subsection (1) for the words "by or on behalf of licensees" substitute "by any person",

(b) in subsection (2)(b) immediately after "licensees" insert " or any other person", and

(c) in subsection (c) immediately after "licensee" insert "or any other person".

**16.** In section 20 of the Law -

- (a) for the heading substitute -

**"Authorised or registered collective investment scheme rules."**,

- (b) in subsection (1) for the words "trustees and custodians" to the end substitute "the rights of investors in such schemes and, in the case of authorised and registered open-ended collective investment schemes, the functions of their designated trustees and custodians."

**17.** In section 23 of the Law -

- (a) for the heading substitute -

**"Regulations limiting validity of licences, authorisations or registrations."**, and

- (b) after the words "or authorisations" insert "or registrations".

**18.** In section 27 of the Law -

- (a) in subsection (2) -

- (i) in paragraph (a), delete the word "specified" and immediately after the words "time and place" insert "specified by the Commission or appointed person",

- (ii) for paragraph (b) substitute -

"(b) to furnish the Commission or an appointed person, on any occasion or at times or intervals specified by the Commission, or appointed person, with such information as the Commission or the appointed person may reasonably require about any matter specified by the Commission, or appointed person, relating to any controlled investment business, or to any offence or suspected offence under this Law, being, if the Commission or the appointed person so requires, information verified in such manner as the Commission or appointed person may reasonably specify.",

(b) for subsection (7) substitute -

"(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 section 38 or 38A, or

(b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.",

(c) after subsection (12) insert the following subsection -

"(13) The provisions of this section 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."

**19.** After section 27D of the Law<sup>d</sup> insert the following section -

**"Investigations by inspectors.**

**27E.** (1) The Commission may, in relation to any licensee, if it considers it desirable to do so -

- (a) in the interests of investors, or
- (b) for the protection of the public or of the reputation of the Bailiwick as a financial 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 business of the licensee 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

---

<sup>d</sup> Section 27D was inserted by Order in Council No. XXXII of 2003.



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 company-

(a) which is or has at any relevant time been an associated company of the licensee under investigation (where the licensee is a company), or

(b) of which a partner in the licensee under investigation is or has at any relevant time been a controller (where the licensee is a partnership).

(3) An inspector may not investigate the business of a company under subsection (2) unless and until the Commission has given notice in writing to the company of the proposed investigation.

(4) A licensee or company being investigated under subsection (1) or (2) and any person who is or has been a director, controller, manager, partner, employee, agent, banker, auditor, advocate or other legal adviser of a licensee or company being so investigated, or who has been appointed to make a report in respect of such a licensee or company under section 3(3)(a), or who is or has been a significant shareholder in relation to such a licensee or company -

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

documents in his custody or power relating to that licensee or company, 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 company, 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) fails to comply with 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 and is liable -

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both,
- (ii) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years, or to both.

(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 38 or 38A, or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) Nothing in this section compels 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.

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

(10) A requirement imposed by or under this section has

effect notwithstanding any obligation as to confidentiality or other restriction on 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.

(11) Subject to the provisions of subsection (12), 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.

(12) 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.

(13) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 36.

(14) The provisions of this section 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 at a time

when he held a licence." .

20. Immediately before section 28 insert -

*"Intervention, administration and winding up*

**Intervention and administration.**

**28AA.** (1) The States may by Ordinance make provision enabling any court to make an order -

(a) authorising the Commission, or any other person appointed by the Commission, to intervene in, or administer, the business or affairs of any person or entity which carries on controlled investment business or which applies for a licence under section 3 or for an authorisation or registration under section 8, and

(b) prohibiting any such person or entity from -

(a) undertaking any business, or

(b) undertaking any business, except in accordance such conditions as the court may order.

(2) Such an Ordinance as is mentioned in subsection (1) may in particular -

- (a) empower any court to make an order enabling the Commission, or any person appointed by the Commission to intervene in, or administer, the business or affairs of any person or entity -
  - (i) generally, or in relation to such business or affairs of the person or entity, and
  - (ii) for such period,

as are specified in the order,
- (b) empower the Commission, or any person appointed by the Commission, to apply for such an order,
- (c) specify the grounds upon which applications may be made,
- (d) make provision relating to appeals,
- (e) make provision relating to the powers that may be exercised by any person under such an order including, without limitation, powers -
  - (i) to ensure that the assets of a person or entity are properly managed,
  - (ii) to restrict the activities of any person or

entity,

- (iii) to require any person or entity to take specific actions, and
- (iv) to disclose information about any person or entity, and
- (f) modify or supplement any enactment or rule of law appertaining to the management, control and ownership of any person or entity including, for the avoidance of doubt, its assets and liabilities."

21. After section 29(1)(c) of the Law insert the following paragraph -

"(cc) a person, other than a Bailiwick body or an individual ordinarily resident in the Bailiwick, where that activity consists of the promotion of controlled investments to licensees or to any person licensed to carry on business under any of the regulatory laws referred to in paragraphs (a) to (d) of the definition of "**regulatory Laws**" in section 44, and that person -

- (i) carries on the activity in or from within the Bailiwick in a manner in which he is permitted to carry it on in or from within, and under the law of, a designated country or territory which,

in the opinion of the Committee,  
affords in relation to activities of that  
description adequate protection to  
investors,

- (ii) has his main place of business in that country or territory and does not carry on any restricted activity from a permanent place of business in the Bailiwick,
- (iii) is recognised as a national of that country or territory by its law, and
- (iv) has given written notice to the Commission of the date from which he intends to carry on that activity in or from within the Bailiwick, or".

**22.** In section 34B of the Law<sup>e</sup> -

- (a) in paragraph (j) after the words "section 3(3)(a)" insert "or appointed under section 27E", and
- (b) in paragraph (k) after the words "section 27" insert ", 27E".

**23.** After section 35(1)(f) of the Law insert the following paragraphs -

---

<sup>e</sup> Section 34B was inserted by Order in Council No. XXXII of 2003.



"(ff) under section 27 to impose a requirement under subsection (2), (4) or (5) of that section (including, for the avoidance of doubt, a requirement imposed under those subsections pursuant to the operation of section 41I),

(gg) under section 27E, to serve a notice under subsection (1) or (3) of that section,".

**24.** For sections 35(2) to (6) substitute the following subsections -

"(2) Before taking any decision mentioned in subsection (1) 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 36 if the Commission were to take the proposed decision,

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

(3) Where -

- (a) a ground for the proposed decision is that any criterion of 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, general representative, auditor or actuary,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to him) giving particulars of the right of appeal which would be exercisable under section 36 if the Commission were to take the proposed decision.

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

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

(6) Nothing in subsection (2) or (3) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in the Bailiwick or elsewhere, or
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission declines under this subsection to disclose information which it considers relevant to the decision proposed or taken, the Commission must so inform the person concerned; and, in the event of an appeal under section 36, subsection (3) of that section shall apply."

**25.** In section 36 of the Law -

- (a) in subsection (1) for the words "it was ultra vires or was an

unreasonable exercise of the powers of the Commission"  
substitute -

- "(a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure."

(b) for subsections (4) and (5) substitute -

"(4) 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.

(5) On an appeal under this section against a decision described in section 35(1) 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.", and

(c) subsection (6) is repealed.

26. After section 38(2)(b) of the Law insert the following paragraph -

"(bb) in connection with an application for registration declaring that a collective investment scheme is a registered collective investment scheme, or".

27. After section 41H insert the following sections -

*"Assistance to relevant overseas authorities*

**Investigations etc. in support of relevant overseas authority.**

**41I.** (1) Where a relevant overseas authority notifies the Commission that it requires assistance in connection with the investigation of market abuse -

- (a) the Commission may exercise the investigative powers described in subsection (6) in relation to a person involved, where that person is a licensee, and
- (b) the Commission, with the prior authority of a majority of its members, may exercise the investigative powers described in subsection (6) in relation to a person involved, where that person is not a licensee.

(2) In deciding whether or not to exercise its investigative powers the Commission may take into account in particular -

- (a) whether in the country or territory of the relevant overseas authority concerned, corresponding assistance would be given to the Commission,
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick,
- (c) the seriousness of the case and its importance to persons in the Bailiwick, and
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Commission may decide that it will not exercise its investigative powers unless the relevant overseas authority undertakes to make such contribution towards the costs of the exercise as the Commission considers appropriate.

(4) If in the exercise of its investigative powers the Commission has appointed any person in response to a request from a relevant overseas authority it may direct that person to permit a

representative of that overseas authority to attend, and take part in, any interview conducted for the purposes of the investigation.

(5) A direction under subsection (4) is not to be given unless the Commission is satisfied that any information obtained by a relevant overseas authority as a result of the interview will be subject to safeguards equivalent to those contained in sections 34A, 34B and 34C.

(6) The investigative powers are the powers that are exercisable in respect of a licensee, or a relevant person in relation to a licensee, in the circumstances provided for under section 27; provided that any power arising or created under section 27 -

(a) shall have effect, for the purposes of this section, as if references in that section to a licensee or a relevant person were references to a person involved, and

(b) where appropriate for the purposes of this section, may be exercised by a majority of the members of the Commission.

(7) For the purposes of this section -

(a) a "**person involved**" is a person -

(i) whom a relevant overseas authority reasonably suspects is, or has been, involved, or

- (ii) who, as a result of enquiries made, or information received, during the course of any investigation under this section, appears to the Commission or the overseas authority to be involved, or have been involved,

in market abuse, whether knowingly or otherwise,

- (b) for the avoidance of doubt, "**market abuse**" includes the offence of insider dealing under the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996.

*Financial penalties and offences*

**Powers of Royal Court to impose financial penalty for non-compliance.**

**41J.** (1) If a person ("**the defaulter**") fails to comply with a requirement imposed on him pursuant to the exercise of the investigative powers under section 41I, the person imposing the requirement may certify that fact in writing to the Royal Court.

(2) If the Royal Court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may order the defaulter to comply with the requirement in such manner and within such period as the Court thinks fit.

(3) If the defaulter fails without reasonable excuse to comply with an order made under subsection (2), the Royal Court may



impose a financial penalty upon the defaulter (and in the case of a body corporate, any director or officer) -

- (a) of such amount, not exceeding £500,000, and
- (b) to be paid within such period,

as the Court thinks fit.

- (4) A financial penalty imposed under this section -
  - (a) is an obligation to pay the amount of the penalty to the States of Guernsey in accordance with the terms of the relevant order of the Royal Court, and
  - (b) may be recovered from the person liable to pay as a civil debt owed by that person to the States of Guernsey.

### **Offences.**

**41K.** (1) A person who knows or suspects that an investigation is being or is likely to be conducted under section 41I is guilty of an offence if -

- (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or

- (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(2) A person who, in purported compliance with a requirement imposed on him pursuant to the exercise of the investigative powers under section 41I -

- (a) provides information which he knows to be false or misleading in a material particular, or
- (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable -

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

*Powers to investigate criminal offences*

**Powers of investigation.**

**41L.** (1) The powers of Her Majesty's Procureur under this section shall be exercisable in any case in which it appears to him -

- (a) on reasonable grounds that there is a suspected offence involving market abuse, wherever committed, and
- (b) that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person.

(2) Her Majesty Procureur may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person whom he has reason to believe has relevant information to attend before Her Majesty's Procureur at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) Her Majesty's Procureur may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation or any documents of a specified class which appear to him so to relate: and -

- (a) if any such documents are produced, Her Majesty's Procureur may -

- (i) take copies or extracts from them,
- (ii) require the person producing them to provide an explanation of any of them,
- (b) if any such documents are not produced, Her Majesty's Procureur may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) Where, on information on oath laid by Her Majesty's Procureur, the Bailiff is satisfied, in relation to any documents, that there are reasonable grounds for believing -

- (a) that -
  - (i) a person has failed to comply with an obligation under this section to produce them,
  - (ii) it is not practicable to serve a notice under subsection (3) in relation to them, or
  - (iii) the service of such a notice in relation to them might seriously prejudice the investigation, and

- (b) that they are on premises specified in the information,

he may issue such a warrant as is mentioned in subsection (5).

(5) The warrant referred to above is a warrant authorizing any officer of police -

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and
- (b) to take possession of any documents appearing to be documents of the description specified in the information or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(6) An officer of police executing a warrant issued under subsection (4) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the officer of police.

(7) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him -

- (a) on a prosecution for an offence under subsection (11), or
- (b) on a prosecution for some other offence where

in giving evidence he makes a statement inconsistent with it.

(8) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

(9) Her Majesty's Procureur may authorise any person to exercise on his behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(10) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

(11) A person who, in purported compliance with a requirement under this section -

- (a) makes a statement which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

(12) A person guilty of an offence under subsection (11) shall -

- (a) on conviction on indictment be liable to imprisonment or a term not exceeding 2 years or to a fine or to both, and
- (b) on summary conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale, or to both.

(13) Where any person -

- (a) knows or suspects that an investigation by the police or Her Majesty's Procureur into market abuse is being or is likely to be carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation,

he shall be guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(14) A person guilty of an offence under subsection (13) shall -

- (a) on conviction on indictment, be liable to imprisonment for a term not exceeding 7 years or to a fine or to both, and
- (b) on summary conviction, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both.

(15) In this section, "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

**Disclosure.**

**41M.** (1) Where any information is subject to an obligation of secrecy or confidentiality imposed by or under any enactment (including in an enactment passed after this Law) the obligation shall not have effect to prohibit the disclosure of that information to any person authorised by Her Majesty's Procureur, but any information disclosed under this subsection may only be disclosed by such a person for the purpose of an investigation, or a prosecution, in the Bailiwick or elsewhere.

(2) Without prejudice to his power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information to or by him subject, in



either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

(3) Subject to subsection (1) and to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by Her Majesty's Procureur or any person duly authorised under section 41L(9) may be disclosed -

- (a) to any person or body for the purposes of any investigation of an offence or prosecution in the Bailiwick or elsewhere,
- (b) to any competent authority, or
- (c) to the Administrator of the States of Guernsey Income Tax Authority.

(4) The following are competent authorities for the purposes of subsection (3)(b) -

- (a) any person or body having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
- (b) any person having under the law of any country or territory outside the Bailiwick functions corresponding to any of the functions mentioned in subparagraph (a), and

- (c) any person appointed to investigate the affairs of a company in the Bailiwick or elsewhere.

**Offences as to "tipping off".**

**41N.** (1) A person is guilty of an offence if -

- (a) he knows or suspects that Her Majesty's Procureur is conducting an investigation, or proposing to conduct an investigation, using his powers under this Law, and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person -
  - (i) in contemplation of, or in connection with, legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any

information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the investigation or proposed investigation was likely to be prejudiced.

(5) No person authorised to act under section 41L(10) shall be guilty of an offence under this section in respect of anything done by him in the course of his acting under the said authority.

(6) A person guilty of an offence under this section shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the uniform scale, or to both."

**28.** After section 42 of the Law insert the following section -

**"Power of States to amend Law by Ordinance.**

**42A.** (1) The States may by Ordinance amend this Law.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice

versa).

(3) An Ordinance under this section may, for the avoidance of doubt -

- (a) create offences, and
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

(4) An Ordinance under this section does not have effect in Alderney or Sark unless approved by the States of Alderney or (as the case may be) by the Chief Pleas of Sark.

(5) For the purposes of subsection (4), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period -

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark."

**29.** In section 44 of the Law -

- (a) insert the following definitions at the appropriate places -

**"closed-ended investment scheme"** means a collective investment scheme under which the investors are not entitled under the terms of the scheme -

(a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or

(b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

**"inspector"** means a person appointed by the Commission under section 27E(1),

**"investment company"** means a collective investment scheme under which the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading risk and giving its members the benefit of the results of the management of those funds,

**"open-ended investment scheme"** means a collective investment scheme under which the investors are entitled under the terms of the scheme -

(a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme,

or

- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

**"registered collective investment scheme"** means a collective investment scheme declared in a registration issued by the Commission under section 8 to be a registered collective investment scheme for the purposes of this Law, and **"registration"** and related expressions shall be construed accordingly,

**"relevant overseas authority"** means a body in another country or territory which carries out any similar function to the Commission,"

- (b) in the definition of **"authorised collective investment scheme"** after the words "and "authorisation"" insert "and related expressions",
- (c) the definition of **"open-ended investment company"** is repealed, and
- (d) in the definition of **"the Ordinary Court"** after the words "Ordinary Court" insert

"and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto."

**30.** In Schedule 1 to the Law -

- (a) in paragraph 1(3) items (k) and (kk) are repealed,
- (b) in paragraph 1(4) the definitions of "**closed-ended unit trust**" and "**closed-ended limited partnership**" are repealed,
- (c) in paragraph 2(1)(a) the word "open-ended" is repealed,
- (d) for paragraph 2(1)(c) substitute -
  - "(c) without prejudice to the generality of item (a), shares in an investment company,"
- (e) in paragraph 2(2) the definitions of "**closed-ended unit trust**" and "**closed-ended limited partnership**" and of "**closed-ended investment company**" are repealed.

**31.** In Schedule 3 to the Law -

- (a) for the heading substitute -

"REQUIREMENTS FOR AUTHORISED OR REGISTERED

COLLECTIVE INVESTMENT SCHEMES", and

- (b) in paragraphs 4 and 5 for the words "the scheme" substitute "a scheme which is promoted or otherwise described as an open-ended investment scheme".

32. For Schedule 4 to the Law substitute the Schedule 4 set out in the Schedule to this Law.

**Repeal of Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959.**

33. The Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959, as amended<sup>f</sup>, is amended as follows -

- (a) at the end of sections 3(1) and 4(1) and (7) insert -

"This subsection shall cease to have effect except to the extent that it applies to the incorporation of companies in the Bailiwick of Guernsey.",

- (b) sections 4(4), 6, 7, 7A, 8(6) and 8A(1)(a) are repealed,

- (c) in section 8A(1)(b) -

- (i) the words ", unit trust scheme or person as the case may be," are repealed, and

- (ii) after the word "authorised" insert the words " or

---

<sup>f</sup> Recueil d'Ordonnances Tome XII, p. 105, amended by Tome XV, p. 197, Tome XVI, p. 473, Tome XX, p. 412, Tome XXV, p. 80, and No's. IV and XXXIII of 2003. Also amended by Order in Council No. XII of 1995.



registered",

- (d) in sections 8A(2) after the word "authorised" insert the words "or registered", and
  - (e) in section 13 (definitions) -
    - (i) in the definition of "**registered**" the words "or unit",
    - (ii) in the definition of "**registered in the Bailiwick**" the words "or units" wherever appearing, and
    - (iii) the definitions of "**unit trust scheme**" and "**unit**",
- are repealed.

**Citation.**

34. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007.

**Commencement.**

35. (1) This section and sections 2(a), (d) and (g), 3, 19, 22 to 25, 27 and 34 shall come into force on the day on which this Law is registered on the Records of the Island of Guernsey.

(2) The remaining provisions of this Law shall come into force on the day appointed by Ordinance of the States, and different dates may be appointed for different provisions and for different purposes.

S.M.D. Ross

Her Majesty's Deputy Greffier

SCHEDULE

Section 32

SUBSTITUTION OF SCHEDULE 4 TO THE LAW

"Sections 4, 28A(3), 34E(1) and 35(6)

SCHEDULE 4

MINIMUM CRITERIA FOR LICENSING

**Fit and proper persons.**

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

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

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of clients or investors (or potential clients or investors), the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position,

- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -
  - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
  - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
  - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
  - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
  - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
  - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds

(Sark) Ordinance, 2007,

- (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, and
- (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referred to in paragraph 2(2).

(2) Without prejudice to the generality of subparagraph (1), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has -

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any provision contained in or made under-
  - (i) this Law,
  - (ii) the regulatory Laws,
  - (iii) any enactment relating to money laundering or

terrorist financing (including, for the avoidance of doubt, rules, instructions and guidance issued by the Commission in relation thereto),  
or

(iv) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -

(A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services, or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre"),

(c) engaged in any business practices (whether unlawful or not) -

(i) appearing to the Commission to be deceitful or

oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law, or

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

(3) For the purposes of subparagraph (2) and for the avoidance of doubt -

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

(b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

(c) "**enactment**" includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

**Integrity and skill.**

2. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on-

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

(2) In conducting his business the applicant or licensee shall at all times act in accordance with the following documents issued by the Commission -

- (a) the Principles of Conduct of Finance Business,
- (b) any rules, codes, guidance, principles and instructions issued from time to time under this Law and any other enactment as may be applicable to him.

**Business to be directed by at least two individuals.**

3. (1) At least two individuals, who are -

- (a) of appropriate standing and experience, and
- (b) sufficiently independent of each other,

shall effectively direct the business.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that



individual would not be unduly influenced by that other individual.

**Composition of board of directors.**

4. Where the applicant or licensee is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of the business, and
- (b) directors without executive responsibility for the management of the business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

**Business to be conducted in prudent manner.**

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

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), an applicant or licensee shall not be regarded as conducting his business in a prudent manner unless -

- (a) he maintains or, as the case may be, will maintain -
  - (i) a capital base, and
  - (ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) he maintains or, as the case may be, will maintain adequate liquidity, having regard to -

(i) the relationship between his liquid assets and his actual and contingent liabilities,

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

(iii) the nature and scale of his operations,

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

(v) any other factors appearing to the Commission to be relevant,

(c) he makes or, as the case may be, will make adequate provision for -

(i) depreciation or diminution in the value of his assets (including provision for bad or doubtful debts),

- (ii) liabilities which will or may fall to be discharged by him, and
- (iii) losses which he will or may incur,
- (d) he maintains or, as the case may be, will maintain -
  - (i) adequate accounting and other records of his business, and
  - (ii) adequate systems of control of his business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), in determining whether an applicant or licensee is to be regarded as conducting its business in a prudent manner the Commission shall also have regard to the following -

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

the structure or organisation of the group of which the applicant or licensee is a part, hinders effective supervision.

(4) For the purposes of -

(a) subparagraph (2)(a), an appropriate amount is -

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

(ii) an amount and nature sufficient to safeguard the interests of his clients and potential clients, having regard to -

(A) the nature and scale of his operations,

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

(C) any other factors appearing to the Commission to be relevant,

(b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensee the Commission may, to such extent as it thinks appropriate, take into account -

- (i) the assets of the applicant or licensee, and
- (ii) the facilities which are available to him and which are capable of providing liquidity within a reasonable period, and
- (c) subparagraph 2(d) -
  - (i) records and systems shall not be regarded as adequate unless they are such as to enable –
    - (A) the business of the applicant or licensee to be managed prudently, and
    - (B) the applicant or licensee to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 1(1)(f), and
  - (ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

**Information required by the Commission.**

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

compliance with the minimum criteria for licensing set out in this Schedule.

**Power to make regulations.**

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

Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey

PRICE £20.00