

# ORDER IN COUNCIL

XXXII  
2003

ratifying a Projet de Loi

ENTITLED

## **The Protection of Investors (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2003**

(Registered on the Records of the Island of Guernsey  
on the 11th August, 2003.)



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2004

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 11th day of August, 2003 before Sir de Vic Carey, Bailiff;  
present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass,  
Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward  
Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith  
Richard, OBE, Michael Henry de la Mare, and Michael John  
Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court the copy of an Order of Her Majesty in Council dated the 17th day of July, 2003, approving and ratifying the Projet de Loi of the States of Guernsey entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2003”, THE COURT, 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 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 17th day of July, 2003

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:"

"That, in pursuance of their Resolution of the 30th of October, 2002, the States of Deliberation at a meeting on the 26th March, 2003, approved a Projet de Loi entitled "The Protection of Investors (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2003," 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 the 23rd April, 2003 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 the 23rd April, 2003 considered the Projet de Loi when a Resolution was passed agreeing to its 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) (No.2) Law, 2003" 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 of and ratify the said 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 Protection of Investors (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2003**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> October, 2002<sup>a</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. (1) The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended<sup>b</sup> (hereinafter called "**the Law of 1987**"), is further amended as follows.

(2) For section 1(2)(a) of the Law of 1987, substitute the following -

"(a) it is licensed under this Law to carry on that business -

(i) in the Bailiwick; and

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<sup>a</sup> Article IX of Billet d'État No. XXII of 2002.

<sup>b</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 the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; and Ordinances X and XX of 1998.



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(ii) in that country or territory; and".

(3) For section 3(2) of the Law of 1987, substitute the following subsections -

"(2) Upon receipt of an application for a licence 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 or partner of the applicant to provide such additional information or documents as the Commission may reasonably require for the purpose of determining the application.

(3) 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 (2) -

(a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case 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.

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(4) The Commission's requirements under subsections (1), (2) and (3) may differ as between different applications.

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

(6) Before deciding whether or not to grant a licence the Commission shall, if the application contains a statement under subsection (1)(d) to the effect that the applicant proposes to carry on controlled investment business in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the General Purposes and Finance Committee of the Chief Pleas of Sark."

(4) Sections 4(2) and 4(3)(e) of the Law of 1987 are repealed.

(5) After section 5(2)(c) of the Law of 1987, insert the following paragraphs -

"(d) require the removal of any director, controller, manager, partner or employee of the licensee;

(e) prohibit, restrict or impose limitations on the carrying on of controlled investment business, or any class or description of controlled investment business, in or from within any place, or any particular place, outside the Bailiwick -

(i) by the licensee itself;

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(ii) by any undertaking established by the licensee (including, without limitation, any branch or subsidiary thereof); or

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

(6) In section 13(1) of the Law of 1987 -

(a) after the words "likely to be affected by the rules" insert "and the public in general";

(b) for the words "have regard to" substitute "consider".

(7) After section 27(9) of the Law of 1987<sup>c</sup>, insert the following subsections -

"(10) Nothing in this section 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.

(11) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

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<sup>c</sup> Section 27(9) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003.



(12) A requirement imposed by or under this section may also be made for the purpose of enabling the Commission to perform its functions."

(8) After section 27B<sup>d</sup> of the Law of 1987, insert the following sections -

**"Notification of change of director, etc.**

**27C.** (1) Subject to the provisions of subsection (3), and subject also to the provisions of any rules made by the Commission under Part III of this Law, where any person has become or has ceased to be a director, controller, partner or manager of a licensee, the licensee shall give notice in writing to the Commission of the fact.

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

(3) The Commission may in its absolute discretion waive any requirement of subsection (1) or (2), either wholly or in part, in respect of any licensee.

(4) A licensee who fails to give notice in accordance with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

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<sup>d</sup> Section 27B was inserted by Order in Council No. II of 1997.

**Notification of acquisition of significant shareholding.**

**27D.** (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.

(2) For the purposes of this Law a "**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 per cent or more but less than 15 per cent of the voting power in general meeting of that company or of any other company of which that company is a subsidiary.

(3) A person who fails to give notice in accordance with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale 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."

(9) After section 28 of the Law of 1987, insert the following heading and sections -

*"Objections to controllers, etc*

**Notification of and objection to controllers, etc.**

**28A.** (1) No person shall become -

- (a) a director or controller of a licensee which is a company; or

- (b) a partner in a licensee which is a partnership;

unless he has notified the Commission in writing of his intention to become such a director, controller or partner and the Commission has notified him in writing that there is no objection to his becoming such a director, controller or partner; and, for the purposes of this subsection, the Commission's written notification that there is no objection to a person becoming such a director, controller or partner 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 this subsection 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 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 director or controller of the description in question, or a partner, of the licensee;
- (b) that the interests of clients of the licensee or relevant investors would not in any other

manner be threatened by that person becoming a director or controller of that description or a partner (and in this paragraph a "relevant investor" is a person having any asset, right or interest (vested or contingent) in relation to a controlled investment in connection with which the licensee is carrying on a restricted activity); or

- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee as a director or controller of the description in question or as a partner -

- (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 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 36.

**Objection to existing controllers.**

**28B.** (1) Where in the opinion of the Commission a person who is -

- (a) a director or controller of a licensee which is a company; or
- (b) a partner of a licensee which is a partnership;

is not or is no longer a fit and proper person to be such a director, controller or partner, the Commission may serve him with a written notice of objection.

(2) A notice of objection under this section shall give particulars of the right of appeal conferred by section 36.

**Contraventions by controllers.**

**28C.** (1) A person who -

- (a) becomes a director or controller or partner in contravention of section 28A(1); or

- (b) becomes or continues to be such a director, controller or partner after a notice of objection has been served on him under section 28A or 28B;

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 director or controller of the description in question or partner; 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 director or controller of the description in question or partner within a period of 14 days immediately following the day on which he becomes so aware.

- (2) A person guilty of an offence under subsection (1) is liable on conviction to a fine.

**Restrictions on sale of shares.**

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

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

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right



to be issued with them, shall be void;

- (b) no voting right shall be exercisable in respect of those shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; and
- (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 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 28A or 28B -

- (a) until the end of the period within which, under section 36, 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

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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 the sale, shall be paid to Her Majesty's Sheriff for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order for the whole or part of the proceeds to be paid to him; and in this subsection "**Her Majesty's Sheriff**" means -

- (a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney;
- (b) where the order was made by the Court of the Seneschal, the Prévôt;
- (c) where the order was made by the Royal Court, Her Majesty's Sheriff.

(7) This section applies -

- (a) to all shares in the licensee of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of that licensee; and
- (b) in cases where the person in question became a controller of the relevant description of a

licensee as a result of the acquisition by him or any associate of his of shares in another company, to all shares in that other company which are held by him or any associate of his and which were not so held before he became such a controller of that licensee.

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

(9) A notice served on the person concerned under subsection (2) shall give particulars of the right of appeal conferred by section 36; 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**" -

- (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, means the Court of Alderney or, as the case may be, the Court of the Seneschal;
- (b) in any other case, means the Royal Court sitting as an Ordinary Court."

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(10) In sections 33(1)(a) and 34(a) of the Law of 1987, before the word "rules" insert "directions,".

(11) After section 34 of the Law of 1987, insert the following headings and sections -

*"Disclosure of information*

**Restrictions on disclosure of information.**

**34A.** (1) Subject to the provisions of section 34B -

- (a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person;
- (b) no person who obtains any such information directly or indirectly from a person who has so received it;

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

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

**Cases where disclosure is permitted.**

**34B.** Section 34A does not preclude -

- (a) the disclosure of -

- (i) information which at the time of disclosure is or has already been made available to the public from other sources; or
  - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
- (b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law;
- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions conferred by or under this Law or would otherwise be in the public interest;
- (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 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 investors or in the public interest;
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country or territory 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(3)(a);
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under section 27 or 30 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by that section are exercisable;
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior

consent of Her Majesty's Procureur to such disclosure, elsewhere;

(m) the disclosure of information to a person or body responsible for a scheme for compensating clients or investors (whether in the Bailiwick or elsewhere) -

(i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge its functions; and

(ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission; or

(n) the disclosure of information by the Commission for the purposes or in the circumstances described in section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended from time to time.

**Information supplied to Commission by relevant overseas authority.**

**34C.** (1) Section 34A 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 or territory 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 34A(1);
- (b) for the purposes or in the circumstances described in section 34B(a), (b) or (h); or
- (c) with the consent of the relevant supervisory authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of section 34B.

*Information & educational material*

**Publication of information & material as to controlled investments, etc.**

**34D.** The Commission shall prepare and publish, in such form and manner as it thinks fit and subject to such charges (if any) as it may decide to levy to cover the costs of preparation and publication, such information and documents as it considers desirable in the interests of investors and the public in general containing material (educational or otherwise) in relation to-

- (a) controlled investments and other classes or descriptions of investments; and

- (b) the carrying on of controlled investment business.

*Prohibition orders*

**Power to make prohibition orders.**

**34E.** (1) If it appears to the Commission, having regard to the provisions of Schedule 4, that an individual is not a fit and proper person to perform functions in relation to controlled investment business carried on by a licensee, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to -

- (a) any controlled investment business, any specified controlled investment business or any specified description of controlled investment business;
- (b) licensees generally or any specified class of licensee.

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

- (a) 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;

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- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

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

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

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

**List of prohibition orders.**

**34F.** (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

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

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

(4) The Commission may publish -

- (a) the list referred to in subsection (1); and
- (b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

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

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

**34G.** (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing -

- (a) stating that the Commission is proposing to make a prohibition order against him;
- (b) stating the terms of, and the grounds for, the proposed prohibition order;
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine; and
- (d) giving particulars of the right of appeal which



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would be exercisable if the Commission were to make the prohibition order.

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

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

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

- (a) stating the terms of, and the grounds for, the prohibition order; and
- (b) giving particulars of the right of appeal conferred by this Law."

(12) After section 35(1)(f) of the Law of 1987 insert the following paragraphs -

- "(g) under section 28A or 28B, to serve a notice of objection;
- (h) under section 28D(2), to give directions or to

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vary or rescind any direction so given;

- (i) under section 34E, to make a prohibition order prohibiting the performance of any function, any specified function or any specified description of function; or
- (j) to refuse to vary or revoke any such order under section 34E(5);".

(13) In section 35(4) of the 1987 Law, after the expression "or 11" insert "or 28A, 28B or 34E".

(14) After section 35(5) of the Law of 1987, insert the following subsection -

"(6) Where -

- (a) a ground for a decision mentioned in subsection (1) 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) a condition of a licence requires the removal of any person as a director, controller, partner, manager or employee;

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

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that person) together with particulars of the right of appeal conferred by section 36."

(15) After section 38(5) of the Law of 1987, insert the following subsection -

"(6) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under section 27 or 30 is guilty of an offence."

(16) In section 39 of the Law of 1987<sup>e</sup>, after the word "section" insert "34A(2)".

(17) In section 44(1) of the Law of 1987, insert the following definitions in the appropriate places -

"**associate**", in relation to any person, means -

- (a) the spouse or child of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;

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<sup>e</sup> Section 39 was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003.

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- (d) if that person is a company -
  - (i) any director or subsidiary of that company; and
  - (ii) any director or employee of any such subsidiary; and
- (e) if that person has with any other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person;"

"**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;"

"**child**" includes a stepchild, an adopted child and an illegitimate child;"

"**company**" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world;"

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**"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;"

**"director"** includes any person who occupies the position of director by whatever name called and, in relation to an unincorporated body, any member of the committee or other similar governing body;"

**"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;"

**"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;"

**"manager"**, in relation to a company, in sections 3(2), 5(2)(d), 27C, 28A and 35(6), means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company -

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- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the company;"

**"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, as amended and -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a member of the Alderney Special Constabulary established pursuant to section 46A of the Government of Alderney Law, 1987;
- (c) in relation to Sark, the Constable and the Vingtenier;"

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



**"regulatory Laws" means -**

- (a) the Banking Supervision (Bailiwick of Guernsey) Law, 1987;
- (b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000;
- (c) the Insurance Business (Bailiwick of Guernsey) Law, 2002;
- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;
- (e) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission;"

**"relevant supervisory authority",** in relation to a country or territory 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, as amended or under the regulatory Laws; or

- (b) such other functions as the Commission may by regulation prescribe;"

"**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 per cent or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary;"

"**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;"

(18) After Schedule 3 to the Law of 1987, insert the following schedules -

#### "SCHEDULE 4

#### FIT AND PROPER PERSONS

##### **Fit and proper persons.**

1. (1) 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 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;
  - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;

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- (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000;
- (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
- (v) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick;
- (vi) any other enactment prescribed for the purposes hereof by regulation of the Commission.

(2) 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 -

- (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, banking, insurance, investment or other financial services (and in this subparagraph "**regulated activities**" has the same meaning as in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000); 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 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.

## SCHEDULE 5

MEANING OF "HOLDING COMPANY" AND  
"SUBSIDIARY COMPANY"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if -

- (a) that other -
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power;
- (b) that a person's appointment thereto follows

necessarily from his appointment as director of that other company;

- (c) that the directorship is held by that other company itself or by a subsidiary of it.

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

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it:

- (b) subject to paragraphs (c) and (d), any shares held or power exercisable -

- (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity);

- (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or

of a trust deed 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, 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, make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law."

**Citation.**

2. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2003.