

ORDER IN COUNCIL

XXI
2002

ratifying a Projet de Loi

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002

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



2002

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

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

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

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

At the Court at Buckingham Palace

The 22nd day of October, 2002

PRESENT,

The Queen's Most Excellent Majesty in Council

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

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

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

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

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

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

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

A. K. Galloway

PROJET DE LOI

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002^a

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^a No. XXI of 2002.

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PROJET DE LOI

ENTITLED

The Insurance Business (Bailiwick of Guernsey) Law, 2002

THE STATES, in pursuance of their Resolution of the 26th day of June, 2002^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

RESTRICTIONS ON CARRYING ON INSURANCE BUSINESS

Preliminary

General restriction on carrying on insurance business.

1. (1) Subject to section 5, and without prejudice to subsection (4) of this section and sections 3 and 4, a person shall not carry on, or hold himself out as carrying on, insurance business in or from within the Bailiwick unless -

- (a) if that business is long term business, that person is licensed by the Commission as an insurer in respect of long term business;

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

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- (b) if that business is general business, that person is licensed by the Commission as an insurer in respect of general business.

(2) For the purposes of this Law, except to the extent that in any particular case the Commission may otherwise direct, a person shall be deemed to be holding himself out as carrying on insurance business in or from within the Bailiwick if -

- (a) by way of business as an insurer, he occupies premises in the Bailiwick or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that he may be contacted at a particular address in the Bailiwick;
- (b) he invites a person in the Bailiwick, by issuing an insurance advertisement or otherwise, to enter into or to offer to enter into a contract of insurance; or
- (c) he is otherwise seen to be carrying on insurance business in or from within the Bailiwick.

(3) For the purposes of this section an advertisement issued or other invitation made by any person on behalf of or to the order of another person shall be treated as an advertisement issued or other invitation made, as the case may be, by that other person.

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(4) Subject to subsection (5), the States may by Ordinance prohibit all licensed insurers or licensed insurers of any specified class from effecting contracts of insurance of any description specified in the Ordinance; and in the event of an Ordinance being made under this subsection a licensed insurer shall not effect a contract of any description specified in the Ordinance on or after the date of commencement of the Ordinance during the continuance in force of the Ordinance.

(5) An Ordinance under subsection (4) shall not prevent a licensed insurer from effecting a contract in pursuance of an obligation to do so contained in a contract lawfully entered into and subsisting immediately before the date of commencement of the Ordinance; but a licensed insurer who is under an obligation to effect a contract of insurance which, apart from the preceding provisions of this subsection, he would have been prevented by an Ordinance under subsection (4) from effecting, shall notify the Commission in writing of the existence and nature of that obligation within the 14 days next following the date of commencement of that Ordinance or within such longer period as the Commission may in any particular case allow.

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

(7) A person who without reasonable excuse fails to give notification to the Commission in accordance with subsection (5) is guilty of an offence.

Long term business and general business.

2. (1) For the purposes of this Law insurance business, including

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domestic business, is divided into either -

(a) long term business; or

(b) general business.

(2) Subject to subsections (3) and (4) -

(a) "**long term business**" means insurance business of any of the descriptions set out in Schedule 1; and

(b) "**general business**" means insurance business other than long term business.

(3) For the purposes of this Law the effecting or carrying out of a contract whose principal object is within any of the descriptions of long term business set out in Schedule 1 but which contains related and subsidiary provisions which are not within any of those descriptions shall be taken to constitute long term business.

(4) Notwithstanding the provisions of subsections (2) and (3) a licensed insurer may elect to regard a contract of insurance on human life expressed to be for a term of not more than 18 months as general business; and any contract of insurance in relation to which a licensed insurer does so elect shall not for any of the purposes of this Law be taken to constitute long term business.

(5) The Committee may by regulation amend any of the provisions of Schedule 1.

Restriction on carrying on domestic business.

3. (1) Subject to section 5, a person shall not carry on, or hold himself out as carrying on, domestic business in or from within the Bailiwick unless that person is licensed by the Commission as an insurer in respect of domestic business.

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

Restriction on Bailiwick body carrying on insurance business outside Bailiwick.

4. (1) Subject to section 5, a Bailiwick body shall not carry on, or hold itself out as carrying on, insurance business of any description in or from within a country outside the Bailiwick unless -

(a) it is licensed by the Commission as an insurer in respect of that description of insurance business; and

(b) that business is carried on outside the Bailiwick -

(i) with the written consent of the Commission granted under this section; and

(ii) in accordance with any conditions subject to which that consent has been granted.

(2) An application for the consent of the Commission under subsection (1)(b) shall be made in such form as the Commission may from time to

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time determine and may be -

- (a) granted unconditionally; or
- (b) subject to the provisions of section 61, granted conditionally or refused.

(3) In determining an application under subsection (2) the Commission may have regard to any matter to which it might have regard under section 7 or 14 when considering whether or not to grant an application from the licensed insurer concerned for a licence or whether or not to revoke a licence held by that licensed insurer; and where the Commission decides -

- (a) to refuse consent under subsection (1)(b);
- (b) subject to the provisions of section 61, to revoke any such consent; or
- (c) subject to the provisions of section 61, to impose, vary or rescind any condition in respect of any such consent;

the Commission shall serve upon the licensed insurer concerned notice in writing of the decision setting out (where appropriate) particulars of the condition in question.

(4) A notice under subsection (3) shall state the grounds of the Commission's decision and shall give particulars of the right of appeal conferred by section 63.

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(5) Where -

- (a) a ground for a decision mentioned in subsection (3) is that any criterion of paragraph 3 of Schedule 7 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 consent under subsection (1)(b) 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 (3) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 63.

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

Exemptions from sections 1, 3 and 4.

5. Sections 1, 3 and 4 do not apply to insurance business carried on by -

- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
- (b) an organisation representative of employers or an

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organisation representative of employees recognised by the Commission as being such an organisation for the purposes of this paragraph, where the insurance business carried on by that organisation is limited to the provision for its members ordinarily resident in the Bailiwick of provident benefits or strike benefits; or

- (c) an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994^c, if that business is financial loss insurance business carried on solely in the course of carrying on, and for the purposes of, banking business.

Licensing of insurers

Application for insurance licence.

6. (1) A person wishing to be licensed as an insurer shall apply in that behalf to the Commission.

(2) An application under this section shall state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on insurance business.

(3) An application under this section shall be made in such form and manner as the Commission may by regulation determine and shall be

^c Order in Council. No. XIII of 1994.

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accompanied by -

- (a) a statement of the applicant's proposed insurance business;
- (b) such other information and documents as the Commission may reasonably require for the purpose of determining the application;
- (c) the appropriate fee prescribed by regulations under section 94; and
- (d) anything else prescribed by regulations under this subsection.

(4) Upon receipt of an application under this section and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be a director, controller, manager, partner or general representative of the applicant to provide such additional information and documents as the Commission may reasonably require for the purpose of determining the application.

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

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

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

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

(8) Before deciding whether or not to grant an application under this section the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on insurance 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.

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

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

Grant or refusal of insurance licence.

7. (1) The Commission may, upon receipt of an application under section 6 from a person wishing to be licensed as an insurer -

- (a) grant the application; or
- (b) subject to the provisions of section 61, refuse to grant the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application under section 6 unless-

- (a) the Commission is satisfied that the criteria specified in Schedule 7 are fulfilled -
 - (i) in relation to the applicant; and
 - (ii) in relation to any person who is or is to be a director, controller, partner, manager or general representative of the applicant;

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- (b) the Commission is satisfied that the applicant intends, upon being licensed, to carry on insurance business in or from within the Bailiwick;
- (c) the applicant has disclosed to the satisfaction of the Commission such information as the Commission has requested of it in relation to persons who will, upon the licensing of the applicant, have any proprietary, financial or other interest in or connection with the applicant;
- (d) the Commission is satisfied that the applicant will, upon being licensed, fulfil the requirements of section 29(1) as to the person to act as the applicant's general representative;
- (e) the Commission is satisfied that the applicant will, upon being licensed, have a margin of solvency and approved assets which will enable it to comply with section 30(1), unless the Commission proposes to modify the requirements of that section in respect of the applicant under section 30(4);
- (f) where the applicant -
 - (i) is a company, the Commission is satisfied that it has a share capital of such amount that will enable it, upon being licensed, to comply with

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section 32(1)(a);

- (ii) is not a company, the Commission is satisfied that it has a level of non-distributable funds that will enable it, upon being licensed, to comply with section 32(1)(b);

unless in either case the Commission proposes to modify the requirements of that section in respect of the applicant under section 32(4);

- (g) where the applicant is a company, the Commission is satisfied that, in relation to every person who is or is to be a controller of the applicant -
 - (i) the interests of the public and of the applicant's policyholders and potential policyholders and the reputation of the Bailiwick as a finance centre would not in any manner be jeopardised by that person being or becoming a controller of the description in question of the applicant; and
 - (ii) without prejudice to subparagraph (i), having regard to that person's likely influence on the applicant as a controller of the description in question, the criteria of Schedule 7 would be fulfilled in relation to that applicant or, if any of

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those criteria were not so fulfilled, that that person would be likely to undertake remedial action;

- (h) where the application is for a licence in respect of -
 - (i) long term business by a person other than a protected cell company, that person is not already licensed in respect of general business; or
 - (ii) general business by a person other than a protected cell company, that person is not already licensed in respect of long term business;

except where the application is for a licence in respect of business, approved by the Commission, which is or will be incidental, in terms of premium income, to the principal insurance business of the applicant;

- (i) the Commission is satisfied that the interests of the public and of the applicant's policyholders and potential policyholders and the reputation of the Bailiwick as a finance centre would not be jeopardised by the applicant acting as an insurer; and
- (j) the Commission has no grounds to believe that it would not be in the best economic interests of the Bailiwick for

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the applicant to be licensed so to act.

(3) In considering whether or not to grant an application under section 6, the Commission -

- (a) shall take into account such written guidance of a general character and shall act in accordance with such written directions of a general character as may be given by the Committee under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^d in relation to insurance business; and
- (b) may take into account -
 - (i) any guidance notes or international standards relating to insurance and regulation issued by a body recognised by the Commission and identified in a code issued under this Law;
 - (ii) the provisions of any code issued under this Law; and
 - (iii) any matter to which it may have regard under section 14 when considering whether or not to revoke a licence.

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

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(4) The Commission shall not consider an application for a licence which is not accompanied by the appropriate fee prescribed by regulations under section 94 or which is otherwise not made in accordance with the provisions of this Law.

(5) Where the Commission decides to refuse to grant a licence, the Commission shall serve upon the applicant, in accordance with the provisions of section 60, notice in writing of the decision.

Insurance licence.

8. (1) Upon approving an application under section 6 from a person wishing to be licensed as an insurer the Commission shall issue to the applicant a licence in such form and containing such information as the Commission may from time to time determine.

(2) A licensed insurer shall immediately deliver the licence issued to it under subsection (1) to the Commission -

(a) whenever required to do so by the Commission; and

(b) upon the revocation, suspension or surrender of the licence.

(3) Except when required by or under subsection (2) to deliver its licence to the Commission, a licensed insurer shall, at its principal place of business in the Bailiwick, at all times during ordinary business hours -

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- (a) make the licence available to any person reasonably requesting to see it; and
 - (b) if it is licensed for domestic business, display the licence in a prominent position.
- (4) The licence remains, at all times, the property of the Commission.
- (5) A person who contravenes any provision of subsection (2) or (3) is guilty of an offence.

Period of validity of insurance licence.

9. A licence shall (unless any condition of the licence provides for any other period of duration) continue to be valid until it is suspended under section 13, revoked under section 14 or surrendered under section 15.

Power to impose insurance licence.

10. (1) Where the Commission has reasonable grounds to suspect, for whatever reason, that a person who does not hold a licence to carry on insurance business of any particular description is carrying on, or holding himself out as carrying on, insurance business of that description in contravention of section 1, 3 or 4, the Commission may, subject to the provisions of section 61, and without prejudice to any other penalties, powers or proceedings in respect of the contravention (whether arising under this Law or otherwise), impose a licence on that person in respect of that description of insurance business; and thereupon that person shall be deemed to

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have been granted a licence and shall be a licensed insurer in respect of that description of insurance business for the purposes of this Law.

(2) When a licence is imposed on any person pursuant to subsection (1) in respect of any description of insurance business, that person may not thereafter (except so far as permitted by any provision of this Law) carry on, or hold himself out as carrying on, insurance business of that description -

- (a) in or from within the Bailiwick; or
- (b) if that person is a Bailiwick body, in or from within any place whatsoever;

otherwise than -

- (i) under the authority of, and in accordance with the terms and conditions of, that licence; and
- (ii) in compliance with the provisions of this Law.

(3) A licence imposed on a person pursuant to subsection (1) may, without limitation, and without prejudice to the provisions of section 12 -

- (a) prohibit him -
 - (i) from carrying on, or holding himself out as carrying on, insurance business of any specified

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description; and

- (ii) from making or receiving payments in respect of any specified description of insurance business;

without the prior approval of the Commission; and

- (b) without prejudice to the preceding provisions of this section, expressly require him to comply with any provision of this Law, including (without limitation) any provision as to the payment of fees under section 94.

(4) A licence imposed on a person pursuant to subsection (1) shall (unless the licence provides otherwise) be effective from the earlier of -

- (a) service upon that person of written confirmation that the licence has been issued; or
- (b) 11 a.m. on the day that an announcement that a licence has been so imposed on him is published in La Gazette Officielle.

(5) Where the Commission decides to impose a licence on any person pursuant to subsection (1) otherwise than with his agreement, the Commission shall serve upon that person, in accordance with the provisions of section 60, notice in writing of the decision.

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(6) Where an appeal is instituted under section 63 against a decision of the Commission to impose a licence on any person pursuant to subsection (1), the licence shall not, by reason of the institution of the appeal, cease to be effective pending the final disposal or withdrawal of the appeal unless the Court before which the appeal is instituted, on the application of the person concerned, orders otherwise; and an order under this subsection may be made on such terms and conditions as the Court may direct.

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

General restrictions and requirements for licensed insurers.

11. (1) A licensed insurer shall not -

- (a) write business, insurance or otherwise, other than that which conforms, in all material respects, with its current business plan; or
- (b) trade in derivatives, other than those derivatives which are approved assets for the purposes of Schedule 2, without the prior written consent of the Commission.

(2) Any proposed material changes in the information contained in a licensed insurer's current business plan (or in the original application for a licence, if no business plan has yet been submitted) shall be notified to the Commission prior to the implementation thereof.

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(3) A Current Personal Questionnaire shall be lodged with the Commission by every licensed insurer in respect of all persons who are of any of the following descriptions -

- (a) a director of the insurer for the time being holding office;
- (b) a controller of the insurer for the time being; and
- (c) a person of such other description as may be prescribed by regulations of the Commission.

(4) A licensed insurer shall comply with this Law (and any Ordinance, regulation or rule under it) and all applicable codes issued from time to time under this Law; and any failure by a licensed insurer so to comply shall (without prejudice to any other penalty or sanction in respect thereof) have effect for the purposes of this Law as a contravention of a condition of that insurer's licence.

(5) In respect of a licensed insurer which is a protected cell company, and without prejudice to the Commission's power to impose conditions in respect of a protected cell company under section 7 of the Protected Cell Companies Ordinance, 1997^e -

- (a) no new cell shall be created without the prior written consent of the Commission;

^e Ordinance No. V of 1997; amended by No. XV of 1998.

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- (b) no new insurance business which creates -
 - (i) a liability attributable to a particular cell of the company; or
 - (ii) a liability solely of the company's non-cellular assets;

to persons who are not associated parties of the insurer shall be written without the prior written consent of the Commission;
- (c) the minimum margin of solvency in respect of the company shall be calculated in such manner as the Commission may specify (which may differ from the provisions of Schedule 2); and
- (d) general business and long term business shall not be underwritten -
 - (i) in the same cell; or
 - (ii) so as to create liabilities in respect of both of those descriptions of business solely in respect of the company's non-cellular assets.

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(6) Without prejudice to any other provision of this Law, a licensed insurer shall, before effecting any change of any director, controller, partner, manager or general representative, notify the Commission of the proposed change and obtain the Commission's written approval thereto: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer from all or any of the requirements of this subsection, either generally or in any particular case or class of case.

(7) For the purposes of subsection (6), the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of receipt by the Commission of written notification of the proposed change unless, before the expiration of that period, the Commission serves notice on the licensed insurer concerned that it does not approve the change.

Conditions of insurance licence.

12. (1) The Commission may, subject to the provisions of section 61, when granting a licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensed insurers generally, to any class of licensed insurer or to any particular licensed insurer.

(3) The Commission may, subject to the provisions of section 61, vary or rescind any condition of a licence.

(4) Without prejudice to the generality of subsection (1), the

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conditions which may be imposed in respect of a licence may make provision as to the duration of the licence and for the protection of the public, the policyholders and potential policyholders of the licensed insurer and the reputation of the Bailiwick as a finance centre; and conditions may (without limitation) -

- (a) require the licensed insurer to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the acceptance or carrying on of insurance business;
- (c) prohibit the licensed insurer from soliciting (whether at all or in any specified manner) insurance business, either generally or from particular persons or classes of persons;
- (d) prohibit the licensed insurer from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller, manager, partner, employee or general representative of the licensed insurer;
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensed insurer;

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- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified;
- (h) require the licensed insurer to maintain in the Bailiwick, or to transfer to and keep in the custody of a bank specified in the condition, assets of such value and description as may be specified therein; and any such condition may provide that -
 - (i) assets kept in the custody of a bank pursuant to that condition shall not, so long as the condition is in force, be removed from the bank or be made the subject of any charge, security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission;
 - (ii) any charge, security interest, trust, assignment, lien or other dealing purportedly created, executed or entered into by the licensed insurer in contravention of that condition shall be ineffective against any claim by any liquidator of the licensed insurer (and such a condition shall be

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effective in law against third parties
notwithstanding any rule of law to the contrary);

- (i) require an actuarial investigation into the technical reserves of a licensed insurer carrying on general business;
- (j) require a licensed insurer to establish and maintain technical reserves, on whatever basis the Commission determines prudential, over and above those required by Recognised Accounting Standards;
- (k) require a licensed insurer to provide evidence of compliance with any condition or direction issued by the Commission in whatever form and manner and at whatever time the Commission may reasonably determine;
- (l) require a licensed insurer to prepare consolidated accounts in addition to the accounts required to be prepared by virtue of section 35;
- (m) require a licensed insurer to appoint a compliance officer with responsibility, under the terms of his appointment, for ensuring compliance by the licensee with the provisions of this Law (and any Ordinance, regulation or rule made under it);

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- (n) require a licensed insurer to deposit with the Commission, and to comply with, a recovery plan.

(5) A licensed insurer which contravenes any condition of a licence is guilty of an offence.

(6) The contravention of a condition of a licence shall, whether or not constituting an offence under subsection (5), be a ground for the suspension or revocation of the licence but shall not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) A licensed insurer whose licence is subject to a condition as to its duration may apply under section 6 for a new licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 or 14 when considering whether or not to grant an application for a licence or to revoke a licence.

(9) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a licence and the date from which any such condition is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the policyholders and potential policyholders of the licensed insurer and the reputation of the Bailiwick as a

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finance centre.

(10) Where the Commission decides, otherwise than with the agreement of the licensed insurer concerned, to impose, vary or rescind any condition in respect of a licence, the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision setting out particulars of the condition in question.

Suspension of insurance licence.

13. (1) The Commission may, subject to the provisions of section 61, by notice in writing served on a licensed insurer suspend the insurer's licence -

- (a) at the request of the insurer; or
- (b) in any case in which it appears to the Commission that it has power, pursuant to the provisions of section 14, to revoke the licence.

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

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

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

(a) the licensee may not carry on, or hold himself out as carrying on, insurance business of the description to which the licence relates in or from within the Bailiwick or, if the licensee is a Bailiwick body, in or from within any place whatsoever; and

(b) no payments may be made by or to the insurer or any person acting on the insurer's behalf in respect of insurance business of that description without the prior written approval of the Commission.

(4) In considering whether or not to suspend an insurer's licence in pursuance of subsection (1) the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 or 14 when considering whether or not to grant an application for a licence or to revoke a licence.

(5) Where the Commission decides, otherwise than with the agreement of the licensed insurer concerned, to suspend a licence, the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision.

(6) The provisions of section 14(3) to (6) shall apply in relation to a

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

Revocation of insurance licence.

14. (1) The Commission may, subject to the provisions of section 61, revoke a licence held by a licensed insurer if it appears to the Commission that -

- (a) any of the criteria of Schedule 7 are not or have not been fulfilled -
 - (i) in relation to the licensed insurer; or
 - (ii) in relation to any person who is or is to be a director, controller, partner, manager, general representative or employee of the licensed insurer;
- (b) the licensed insurer or any other person described in paragraph (a)(ii) -
 - (i) has contravened or committed an offence under any provision of this Law or any Ordinance, regulation or rule made under it; or
 - (ii) has contravened any prohibition, restriction, condition, requirement, code, duty, direction or

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arrangement under any such provision;

- (c) a person has become a controller, partner or director of the licensed insurer in contravention of section 25 or has become or continued to be a controller, partner or director after being given notice of objection under section 25 or 26;
- (d) the Commission has been provided with false, misleading, deceptive or inaccurate information under or for the purposes of this Law (or any Ordinance, regulation or rule made under it) -
 - (i) by or on behalf of the licensed insurer; or
 - (ii) by or on behalf of a person who is or is to be a director, controller, partner, manager, general representative or employee of the licensed insurer;
- (e) the interests of the public or of the policyholders or potential policyholders of the licensed insurer or the reputation of the Bailiwick as a finance centre are in any way jeopardised, whether by the manner in which the licensed insurer is conducting or proposes to conduct its affairs or for any other reason;

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- (f) any fee prescribed by regulations under section 94 payable by the licensed insurer or payable in respect of the licence has not been paid;
- (g) a relevant supervisory authority in a country outside the Bailiwick has withdrawn from the licensed insurer an authorisation corresponding to a licence under this Law;
- (h) a composition or arrangement with creditors has been made in respect of the licensed insurer, or a receiver has been appointed in respect of, or possession has been taken of, any property of the licensed insurer by or on behalf of its creditors or the holders of debentures issued by it;
- (i) where the licensed insurer is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which, in the opinion of the Commission, corresponds as nearly as may be to any event described in paragraph (h), (k), (l) or (m);
- (j) the licensed insurer has not carried on insurance business within a period of 12 months beginning on the day on which the licence was granted or, having so carried on insurance business, has subsequently not done so for any period of more than 12 consecutive months;

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- (k) a declaration of insolvency has been made in respect of the licensed insurer or the affairs of the licensed insurer have been declared in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal;
- (l) an interim vesting order has been made against the licensed insurer in respect of any real property in the Bailiwick;
- (m) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up, a liquidator (provisional or otherwise) has been appointed to act in relation to the estate or affairs of the licensed insurer or the licensed insurer has passed a special resolution requiring it to be wound up voluntarily; or
- (n) the insurer's general representative has failed to satisfy an obligation to which he is subject by virtue of this Law.

(2) In considering whether or not to revoke a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 7 when considering whether or not to grant an application for a licence.

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(3) A decision of the Commission to revoke a licence shall not, subject to the provisions of subsection (4), have effect until the end of the period within which, under section 63, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

(4) Where the Commission is of the view that it is necessary or desirable to do so -

(a) in the interests of the public or of the policyholders or potential policyholders of a licensed insurer; or

(b) for the protection or enhancement of the reputation of the Bailiwick as a finance centre;

the Commission may apply to the Court for an order under this subsection directing that its decision to revoke a licence should, without prejudice to any appeal in respect of the decision under section 63, have immediate effect; and the Court may make an order under this subsection on such terms as it thinks just.

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

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

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- (a) where the licensed insurer in relation to the licence of which the order is sought -
 - (i) is an Alderney company; or
 - (ii) is not an Alderney company or a Guernsey company but has its principal place of business in Alderney;
- the Court of Alderney;
- (b) where the licensed insurer in relation to the licence of which the order is sought is not an Alderney company or a Guernsey company but has its principal place of business in Sark, the Court of the Seneschal;
 - (c) in any other case, the Royal Court.

(7) Where the Commission decides, otherwise than with the agreement of the licensed insurer concerned, to revoke a licence, the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision.

Surrender of insurance licence.

15. (1) A licensed insurer may surrender its licence by notice in writing served upon the Commission.

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

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

(4) The Commission may, on receipt of an application under subsection (3), and subject to the provisions of section 61, decide not to allow the surrender of a licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender shall not have effect before the end of the period within which, under section 63, an appeal can be brought or, if an appeal is brought within that period, before the appeal is finally disposed of or withdrawn.

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

(6) The Commission may, subject to the provisions of section 61, refuse its consent to the surrender of a licence -

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- (a) if in the opinion of the Commission the insurance liabilities of the licensed insurer have not been discharged or transferred;
 - (b) if the Commission believes that the surrender would not be in the best interests of the public, the insurer's policyholders or potential policyholders or the reputation of the Bailiwick as a finance centre; or
 - (c) if the name of the licensed insurer would not, immediately after the surrender, comply with the requirements of section 18.
- (7) Where the Commission decides -
- (a) not to allow the surrender of a licence to be withdrawn; or
 - (b) not to give consent to the surrender of a licence;

the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision.

Directions to insurers

Directions to licensed insurers.

- 16.** (1) The Commission may, subject to the provisions of section 61 -

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- (a) when serving notice under section 13 or 14 upon a licensed insurer that the Commission has decided to suspend or revoke its licence;
- (b) at any time after such a notice has been served (whether before or after the licence is suspended or revoked);
- (c) at any time after a licensed insurer has served a notice under section 15 surrendering its licence (whether or not the Commission has consented to the surrender under section 15(5)); or
- (d) in the case of a licensed insurer whose licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter;

give the insurer such directions as appear to the Commission to be desirable in the interests of the public, the policyholders and potential policyholders of the insurer and the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise.

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

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

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action or to restrict the scope of its business in a particular way;

- (b) prohibit or impose limitations upon the carrying on of insurance business and other business;
- (c) prohibit the licensed insurer from soliciting any new business;
- (d) prohibit the licensed insurer from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller, partner, manager, employee, general representative, auditor or actuary.

(3) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1), and any direction given by virtue of either of those paragraphs shall cease to have effect, if -

- (a) the Commission serves upon the licensed insurer concerned notice in writing that it no longer proposes to suspend or revoke its licence; or
- (b) the Commission's decision to suspend or revoke the licence is reversed on appeal under section 63.

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(4) No direction shall be given by virtue of paragraph (c) of subsection (1), and any direction given by virtue of that paragraph shall cease to have effect -

(a) if the Commission allows the licensed insurer, under section 15(3), to withdraw the surrender of its licence;
or

(b) in cases where the Commission decides not to allow the licensed insurer, under section 15(3), to withdraw the surrender of its licence, if the Commission's decision is set aside on appeal under section 63.

(5) A licensed insurer which contravenes any provision of a direction under subsection (1) is guilty of an offence.

(6) A contravention by a licensed insurer of a direction under subsection (1) shall not of itself invalidate any contract entered into or any transaction completed under the authority of the licence concerned.

(7) The Commission may, subject to the provisions of section 61, vary or rescind any direction under subsection (1) by notice in writing served upon the licensed insurer concerned.

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

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shall have regard to the interests of the public and the policyholders and potential policyholders of the licensed insurer to whom the direction was given and the reputation of the Bailiwick as a finance centre.

(9) Where the Commission decides, otherwise than with the consent of the licensed insurer concerned, to impose, vary or rescind a direction under subsection (1), the Commission shall serve upon the licensed insurer concerned, in accordance with the provisions of section 60, notice in writing of the decision setting out the terms of the direction in question.

Information as to insurers

List of, and information as to, licensed insurers.

17. (1) The Commission shall -
- (a) establish and maintain, in such form as the Commission may determine, a list of all insurers who are for the time being licensed insurers;
 - (b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list; and
 - (c) publish a copy of the list on the Commission's official website.

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(2) The list maintained under subsection (1) shall contain, in relation to each licensed insurer -

- (a) the name of the insurer;
- (b) the addresses or principal places of business of the insurer in the Bailiwick;
- (c) indications as to whether the insurer is licensed in respect of -
 - (i) long term business;
 - (ii) general business;
- (d) an indication as to whether the insurer is licensed in respect of domestic business;
- (e) details of -
 - (i) any conditions of the insurer's licence or directions restricting the acceptance of new business; and
 - (ii) any condition of the insurer's licence imposed under section 12(4)(h) providing that any assets shall not be made the subject of any charge,

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security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission; and

- (f) such other particulars as the Commission may determine.

(3) The Commission shall, in January in each year, cause a notice to be published in La Gazette Officielle stating that the list of insurers maintained under subsection (1) is available for inspection at the Commission and that copies of the list are available for purchase.

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

(a) whether in consequence of -

(i) any grant of a licence under section 7 or suspension, revocation or surrender of a licence under section 13, 14 or 15; or

(ii) any change in relation to a licensed insurer; or

(b) due to an error or for any other reason;

that the list maintained under subsection (1) or any particular contained in an entry in that list is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

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- (5) If, pursuant to the provisions of subsection (4) -
- (a) an entry is added to the list maintained under subsection (1) indicating that a person is licensed in respect of domestic business or exempt from the requirements of section 3 in respect of domestic business;
 - (b) an entry in the list maintained under subsection (1) is erased, being an entry indicating that a person is so licensed or exempt; or
 - (c) an addition, erasure or other alteration is made to the particulars referred to in subsection (2) contained in an entry relating to a person so licensed or exempt;

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

(6) Without prejudice to the provisions of subsection (5), the Commission may give public notice of the fact that -

- (a) a particular insurer has ceased to be a licensed insurer, whether by virtue of the revocation, surrender or expiry of the licence or otherwise, or a particular insurer's licence has been suspended;

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- (b) a particular person -
 - (i) is not a licensed insurer or has not been a licensed insurer; or
 - (ii) has been granted or refused a licence;

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and of the policyholders or potential policyholders of the insurer or other person in question and the reputation of the Bailiwick as a finance centre.

PART II
INSURANCE DESCRIPTIONS AND NAMES

Restrictions on use of certain descriptions and names.

18. (1) No person other than-
- (a) a licensed insurer; or
 - (b) a person who has first obtained the permission of the Commission in that behalf under section 19 and who is acting in accordance with the conditions of that permission;

shall -

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(i) so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language) -

(A) that he is carrying on insurance business in the Bailiwick or (in the case of a Bailiwick body) that he is carrying on insurance business anywhere; or

(B) that he is a licensed insurer; or

(ii) use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) -

(A) that he is carrying on insurance business in the Bailiwick or (in the case of a Bailiwick body) that he is carrying on insurance business anywhere; or

(B) that he is a licensed insurer.

(2) No person shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed insurer to carry on insurance business.

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

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of an offence.

Permission to use certain descriptions or names.

19. (1) A person wishing to obtain permission for the purposes of section 18, 23 or 24 shall apply in that behalf to the Commission.

(2) An application under subsection (1) shall be made in such form and manner and shall be accompanied by such information and documents as the Commission may require; and the Commission may at any time after receipt of the application require the applicant to furnish such additional information and documents as it considers necessary or desirable.

(3) The Commission may, upon receipt of an application under subsection (1) -

(a) grant the application unconditionally; or

(b) subject to the provisions of section 61 -

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

(ii) refuse the application.

(4) Where the Commission decides -

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

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- (b) subject to the provisions of section 61, to revoke a permission granted under this section; or
- (c) subject as aforesaid, to impose, vary or rescind any condition in respect of any such permission;

it shall give written notice of that decision to the applicant or (as the case may be) the holder of the permission stating the grounds of the Commission's decision and setting out particulars of the right of appeal conferred by section 63.

Commission may object to certain names.

20. (1) An applicant for a licence under this Law shall give notice in writing to the Commission of its name and of any name it is using or proposing to use for the purposes of or in connection with any business carried on by it and the Commission may, subject to the provisions of section 61, by notice in writing served upon it, object to that name.

(2) Where a licensed insurer proposes to change its name or any name it uses for the purposes of or in connection with any business carried on by it, or to use a name for the purposes of or in connection with any business carried on by it, it shall give notice in writing to the Commission of the proposed name and the Commission may, subject to the provisions of section 61, within a period of 56 days immediately following the receipt by it of such notice, by notice in writing served upon the licensed insurer object to the proposed name.

(3) The Commission may also, subject to the provisions of section 61, give notice objecting to a name in cases where the person in question failed to

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give notice to the Commission in accordance with subsection (1) or (2).

(4) The Commission shall not give notice objecting to a name under subsection (1), (2) or (3) unless it considers that the name is -

(a) misleading to the public (whether because it might induce the public to confuse the person in question with some other person established in the Bailiwick or elsewhere, or for any other reason); or

(b) otherwise undesirable.

(5) For the purposes of this section -

(a) the whole of the name in question shall be taken into account in deciding whether it is misleading or undesirable; but

(b) no objection may be made to so much of the name as the person in question is entitled to use by virtue of the preceding provisions of this Law.

(6) Where as a result of a material change in circumstances since the time when notice was given to the Commission under subsection (1) or (2) or as a result of further information becoming available to the Commission since that time, it appears to the Commission that a name to which it might have objected under that subsection gives so misleading an indication of the nature of the activities of the

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person in question as to be likely to cause harm to the public, the Commission may, subject to the provisions of section 61, by notice in writing served upon that person, object to that name.

Provisions as to notices under section 20.

21. (1) A notice to be given to the Commission under section 20 shall be given in such manner and form as the Commission may specify and shall be accompanied by such information and documents as the Commission may require.

(2) A notice of objection under section 20 shall state the grounds of the Commission's objection and give particulars of the right of appeal conferred by section 63.

(3) A notice of objection -

(a) under section 20(1), (2) or (3), may take immediate effect;

(b) under section 20(6), takes effect at the end of the period within which, under section 63, an appeal can be brought or, if an appeal is brought within that period, when the appeal is finally disposed of or withdrawn.

Offences in relation to objections to names.

22. (1) Where the Commission gives notice objecting to a name under section 20, the person upon whom the notice was served shall not use or cause or permit to be used the name for the purposes of or in connection with any business

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carried on in or from within the Bailiwick after the notice takes effect.

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

Incorporation and change of name of companies.

23. (1) Without prejudice to the provisions of any other enactment -

- (a) no application under the Companies (Guernsey) Law, 1994^f or the Companies (Alderney) Law, 1994^g to the Royal Court or (as the case may be) the Registrar for the registration of the memorandum of a company in the proposed name of which there appears the word insurance or assurance or any cognate expression, whether in English or any other language, shall be granted unless the applicant establishes that the permission of the Commission in that behalf has been obtained under section 19 or under section 31 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and any conditions subject to which that permission was granted have, so far as practicable, been complied with;
- (b) no application under the Companies (Guernsey) Law,

^f Order in Council No. XXXIII of 1994; No. XIV of 1996; and No. II of 2002.

^g Order in Council No. XXXIV of 1994.

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1994 or the Companies (Alderney) Law, 1994 to the Royal Court or (as the case may be) the Court of Alderney for an order confirming a change of company name by the inclusion (whether in English or any other language) of the word insurance or assurance or any cognate expression shall be granted unless the applicant establishes that -

- (i) it is a licensed insurer, licensed insurance intermediary or licensed insurance manager; or
 - (ii) it has obtained the permission of the Commission in that behalf under section 19 or under section 31 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 and any conditions subject to which that permission was granted have, so far as practicable, been complied with;
- (c) no such application under the said Laws for the registration of the memorandum of a company or for an order confirming a change of company name shall be granted unless the applicant is able to produce a letter from the Commission stating that no notice of objection under section 20 is in force in respect of the proposed name.

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(2) The Commission may by regulation amend subsection (1) by adding any word to, or removing any word from, the words the use of which in the name or proposed name of a company is for the time being regulated by that subsection.

Applications by Commission for change of company name.

24. (1) Where a Guernsey company or an Alderney company other than-

(a) a licensed insurer; or

(b) a company which has first obtained the permission of the Commission in that behalf under section 19 and which is acting in accordance with the conditions of that permission;

has a company name which indicates or may reasonably be understood to indicate (whether in English or any other language) that it is a licensed insurer or that it is carrying on insurance business in or from within any place whatsoever, the Royal Court or, in the case of an Alderney company, the Court of Alderney may, on the application of the Commission, direct the company to change its name within such period and subject to such penalty as the Royal Court or (as the case may be) the Court of Alderney may direct.

(2) Where a Guernsey company or an Alderney company other than-

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- (a) a licensed insurer; or
- (b) a company which has first obtained the permission of the Commission in that behalf under section 19 and which is acting in accordance with the conditions of that permission;

applies to the Royal Court or, in the case of an Alderney company, to the Court of Alderney for an order confirming a change of company name to a name which indicates or may reasonably be understood to indicate (whether in English or any other language) that the company is a licensed insurer or that it is carrying on insurance business in or from within any place whatsoever, the Royal Court or (as the case may be) the Court of Alderney may refuse the application.

(3) A company which fails to comply with any provision of a direction under subsection (1) is, without prejudice to any penalty specified in the direction -

- (a) guilty of an offence; and
- (b) liable to be wound up on the application of the Commission under section 94 of the Companies (Guernsey) Law, 1994 or, in the case of an Alderney company, section 125 of the Companies (Alderney) Law, 1994.

(4) The provisions of this section are without prejudice to the

provisions of any other enactment.

PART III
REGULATION OF LICENSED INSURERS

Objections to Controllers

Notification of and objection to controllers, etc.

25. (1) No person shall become a controller of a licensed insurer which is a company, or a partner in a licensed insurer which is a partnership, or a director of a licensed insurer which is an unincorporated body, unless -

- (a) he has notified the Commission in writing of his intention to become such a controller, partner or director;
- (b) he has, unless the Commission decides to waive the requirements of this paragraph, completed and delivered to the Commission a personal questionnaire in a form to be determined from time to time by the Commission; and
- (c) the Commission has notified him in writing that there is no objection to his becoming such a controller, partner or director;

and, for the purposes of paragraph (c), the Commission's written notification that

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there is no objection to a person becoming such a controller, partner or director shall be deemed to have been given on the expiration of a period of 60 days beginning on the date of compliance by that person with the requirements of paragraphs (a) and (b) and any other requirements imposed under subsection (2) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person.

(2) Following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require him to furnish such additional information or documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection.

(3) The Commission may, subject to the provisions of section 61, serve a notice of objection under this section if it is not satisfied -

- (a) that the person concerned is a fit and proper person to become a controller of, a partner in, or (as the case may be) a director of, the licensed insurer;
- (b) that the interests of the public and of the insurer's policyholders or potential policyholders and the reputation of the Bailiwick as a finance centre would not in any other manner be jeopardised by that person becoming such a controller, partner or director; or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed

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insurer as such a controller, partner or director -

(i) the criteria of Schedule 7 would continue to be fulfilled -

(A) in relation to that licensed insurer; and

(B) in relation to any person who is or is to be a director, controller, partner, manager, general representative or employee of that licensed insurer; 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 63.

Objection to existing controllers, etc.

26. (1) Where in the opinion of the Commission a person who is -

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- (a) a controller of a licensed insurer which is a company;
- (b) a partner in a licensed insurer which is a partnership; or
- (c) a director of a licensed insurer which is an unincorporated body,

is not or is no longer a fit and proper person to be such a controller, partner or (as the case may be) director, the Commission may, subject to the provisions of section 61, serve him with a written notice of objection.

(2) A notice of objection under this section shall -

- (a) state the grounds for the Commission's objection; and
- (b) give particulars of the right of appeal conferred by section 63.

Contraventions by controllers, etc.

27. A person who -

- (a) becomes a controller, partner or director in contravention of section 25(1); or
- (b) becomes or continues to be a controller, partner or director after a notice of objection has been served on him under section 25 or 26;

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is guilty of an offence unless he shows that he was not aware of the acts or circumstances by virtue of which he became a controller, partner or director; but in such a case he shall be guilty of the offence if he fails to give the Commission notice in writing of the fact that he has become a controller, partner or director within a period of 14 days immediately following the day on which he becomes so aware.

Restrictions on sale of shares.

28. (1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of section 25(1) or has become or continued to be such a controller after a notice of objection has been served on him under section 25 or 26.

(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;

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- (d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensed insurer, whether in respect of capital, dividend or otherwise.

(3) The Court, on the application of the Commission, may order the sale of any specified shares to which this section applies and, if the shares are subject to restrictions under subsection (2), that they shall cease to be subject thereto.

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under section 25 or 26 -

- (a) until the end of the period within which, under section 63, an appeal can be brought against the notice of objection; or
- (b) if such an appeal is brought within that period, until the appeal is dismissed or withdrawn.

(5) Where an order is made under subsection (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold pursuant to an order under subsection (3), the proceeds of sale, less the costs of sale, shall be paid to Her Majesty's Sheriff for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for an order for the whole or part of the proceeds to be paid to

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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 licensed insurer 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 licensed insurer; and
 - (b) in cases where the person in question became a controller of the relevant description of a licensed insurer 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 licensed insurer.

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(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed insurer 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 63; and any direction contained in the notice may be varied by a further direction or rescinded by the Commission by notice in writing to that person.

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

(a) where the person against whom the order under subsection (3) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal;

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

General requirements

General representative of licensed insurer.

29. (1) A licensed insurer shall appoint, and at all times maintain the appointment of, as the insurer's general representative, to act generally on behalf of the insurer and to accept service of any document on behalf of the insurer, either -

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- (a) a person who is both -
 - (i) an executive director of the insurer who is (subject to the provisions of subsection (4)) ordinarily resident in Guernsey, Herm or Jethou or, if no such director of the insurer is ordinarily so resident, an employee or agent of the insurer who is (subject as aforesaid) ordinarily resident in Guernsey, Herm or Jethou; and
 - (ii) approved by the Commission as a fit and proper person to act as the insurer's general representative; or
- (b) a licensed insurance manager so approved by the Commission.

(2) Without prejudice to the generality of his functions under subsection (1), the general representative of a licensed insurer shall be responsible for making any return, depositing any accounts, reports and other documents and furnishing any information which, by or under any provision of this Law (or any Ordinance, regulation, rule or code under it), including but not limited to any conditions or directions imposed under section 12 or 16, he or that insurer is required to make, deposit or furnish to the Commission:

Provided that the Commission may by regulation make such provision as they think fit in relation to the functions and responsibilities of a

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general representative, including provision amending this section.

(3) The general representative of a licensed insurer shall not resign his position, and the insurer shall not remove him, unless -

(a) a replacement general representative has given the Commission written notice that he has consented to accept the position; or

(b) the Commission has agreed in writing to the resignation or removal of the general representative.

(4) The Commission may in any particular case approve, as a fit and proper person to act as the general representative of an insurer which is an Alderney body or a Sark body, a person who is ordinarily resident in the Island of Alderney or, as the case may be, the Island of Sark.

(5) A licensed insurer which contravenes any provision of this section or of any regulations under it is guilty of an offence.

Margin of solvency and approved assets of licensed insurer.

30. (1) Subject to subsection (3), a licensed insurer shall at all times maintain a margin of solvency and approved assets in accordance with the provisions of Schedule 2.

(2) For the purposes of this Law approved assets are those listed in or determined in accordance with paragraph 2 of Schedule 2

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(3) For the purposes of this Law the margin of solvency of an insurer is the excess of the value of the assets of the insurer over the value of the liabilities of the insurer, those values being determined in accordance with paragraphs 3, 4, 5 and 6 of Schedule 2.

(4) The Commission may by notice in writing served on an insurer modify, subject to such conditions, if any, as may be specified in the notice, the margin of solvency requirements imposed by subsection (1) in respect of that insurer where the Commission is satisfied that -

- (a) the policyholders of that insurer are jointly and severally liable to discharge all of the liabilities of the insurance business carried on by that insurer; or
- (b) all liabilities of that insurer can be satisfied from available funds or arrangements.

(5) The Commission may by notice in writing served on an insurer-

- (a) rescind any modification made by it under this section;
or
- (b) impose, vary or rescind any condition in respect of any such modification.

(6) Notwithstanding the provisions of Schedule 2, where the

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Commission has, under section 12(4)(l), imposed a condition on a licensed insurer requiring the preparation of consolidated accounts, the margin of solvency calculation shall be carried out on the basis of those accounts.

Restrictions as to payment of dividends.

31. (1) A licensed insurer which is a company shall not declare or pay any dividend if the declaration or payment would cause the insurer to fail to meet the margin of solvency or approved asset requirements applicable to it by virtue of section 30.

(2) When considering the provisions of subsection (1) the directors of the licensed insurer shall (without limitation) have regard to the proposed operations of the insurer in the 12 month period following the proposed declaration or payment of the dividend.

(3) The provisions of this section are in addition to the provisions of section 33 of the Companies (Guernsey) Law, 1994 and sections 61 and 62 of the Companies (Alderney) Law, 1994.

Minimum level of paid up capital.

32. (1) Subject to the provisions of this section, a licensed insurer which -

- (a) is a company, shall maintain a paid up share capital of not less than the Minimum Capital Requirement or an equivalent sum in any currency acceptable to the Commission;

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- (b) is not a company, shall maintain, in a form to be determined by the Commission under section 12, a level of non-distributable funds of not less than the Minimum Capital Requirement or an equivalent sum in any currency acceptable to the Commission.

(2) A licensed insurer which is a company shall maintain minimum shareholders' funds of at least 75% of the Minimum Capital Requirement or an equivalent sum in any currency acceptable to the Commission.

(3) For the purposes of this section the equivalent sum in any currency acceptable to the Commission of the value specified in sterling as the Minimum Capital Requirement shall be calculated in respect of any particular day at the sterling exchange rate prevailing at the close of that day.

(4) The Commission may by notice in writing served on a licensed insurer modify, subject to such conditions, if any, as may be specified in the notice, any requirement imposed by subsection (1) or (2) as respects that insurer -

- (a) if it is the holder of a valid and irrevocable letter of credit or other instrument approved by the Commission, in either case provided by an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 or some other institution acceptable to the Commission, for such amount and on such conditions as the Commission may

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approve; or

- (b) in any other case if the Commission has, under section 30(4), modified the requirement imposed under subsection (1) of that section in respect of that licensed insurer.

(5) The Commission may by notice in writing served on a licensed insurer -

- (a) rescind any modification made by it under this section; or

- (b) impose, vary or rescind any condition in respect of any such modification.

(6) In computing, for the purposes of subsection (1), the paid up share capital of a company, use of the share premium account is permitted.

Annual return of licensed insurer.

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

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

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- (a) an up-to-date business plan;
- (b) a margin of solvency and approved asset calculation;
- (c) a declaration of reliance on reinsurers, in such form, containing such particulars and accompanied by such information and documents (which shall be in such form) as the Commission may require;
- (d) a 12 month financial forecast;
- (e) a copy of the auditors' management letter or confirmation from the general representative that the auditors have confirmed that no auditors' management letter is required to be issued; and
- (f) a certificate signed by the general representative confirming -
 - (i) compliance throughout the period covered by the annual return with the margin of solvency and approved asset requirements;
 - (ii) compliance throughout the said period with the insurers' code of conduct or any other code issued under this Law;

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- (iii) that the accounts have been prepared and deposited in accordance with this Law; and
- (iv) that, where applicable, an actuarial report has been prepared and deposited in accordance with this Law;

and where the Commission has, under section 12(4)(l), imposed a condition on a licensed insurer requiring the preparation of consolidated accounts, then all the information and documents required by regulations under subsection (1) to be included in or to accompany the insurer's annual return shall be prepared and submitted on a consolidated basis.

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

Appointment of auditors.

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

(2) A licensed insurer making an appointment under this section shall forthwith give the Commission written notice stating -

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- (a) the date of the appointment; and
- (b) the name and qualification of the person appointed;

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

(3) Without prejudice to the provisions of subsection (2), a licensed insurer which is a company shall forthwith give written notice and explanation to the Commission -

- (a) if the insurer proposes to give special notice to its shareholders of a resolution removing an auditor before the expiration of his term of office; or
- (b) if the insurer gives notice to its shareholders of a resolution replacing an auditor at the expiration of his term of office.

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

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of his

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term of office; or

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

and a notice under paragraph (a) shall contain -

- (i) a statement to the effect that there are no circumstances connected with his ceasing to be auditor which he considers should be brought to the attention of the Commission; or

- (ii) if there are any such circumstances, a report of them.

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

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

Annual accounts.

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

- (a) disclose with reasonable accuracy, at any time, the state of affairs of the licensed insurer at that time; and

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- (b) enable the licensed insurer to prepare annual financial statements in accordance with this section.

(2) A licensed insurer shall prepare from its accounting records, in respect of each financial year, and shall produce to the Commission within a period of four months beginning on the close of each financial year (or such additional time as the Commission may in any particular case allow), such accounts as may be required by the Commission.

(3) The accounts -

- (a) shall be prepared in accordance with Recognised Accounting Standards;
- (b) shall give a true and fair view of -
 - (i) the licensed insurer's state of affairs at the balance sheet date; and
 - (ii) its profit or loss for the financial period ending on that date; and
- (c) shall state the Recognised Accounting Standards adopted.

(4) In the event of conflict between -

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- (a) any requirement of Recognised Accounting Standards;
and
- (b) any requirement of or under this Law (or any Ordinance, regulation or rule under it), including (without limitation) any requirement arising by virtue of any condition or direction imposed under this Law;

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

- (5) The requirements of the Commission under subsection (2) may -
 - (a) specify which accounting standards will be Recognised Accounting Standards for the purposes of this section;
 - (b) specify the form of the accounts required to be prepared by virtue of this section;
 - (c) specify the information to be included in the accounts required to be prepared by virtue of this section;
 - (d) permit any information so specified to be given, instead of in the accounts, in a note therein or in a statement or report annexed thereto;
 - (e) require there to be given in such a note, statement or

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report such additional information as may be specified;

- (f) as respects such accounts, notes, statements and reports and the information contained therein, require there to be given by specified persons and to be annexed to the accounts certificates of such matters as may be specified;
- (g) specify the persons by whom the accounts are to be signed;
- (h) specify additional requirements in respect of protected cell companies; and
- (i) make such other provision -
 - (i) in relation to accounts and accounting records; and
 - (ii) for the purposes of the implementation of this section;

as the Commission thinks fit.

(6) Notwithstanding the provisions of this section or of any requirements thereunder, the Commission may in any particular case, by notice in writing served on a licensed insurer -

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- (a) agree to the preparation of that licensed insurer's accounts in a form other than a form specified by those provisions or requirements;
- (b) require that licensed insurer to include in those accounts such additional information as the Commission considers should be so included.

(7) References to accounts in this Part of this Law (including Schedule 3) include references to -

- (a) any notes therein and any statements, reports and certificates annexed thereto; and
- (b) in the case of a licensed insurer the assets and liabilities of which are taken for the purposes of section 30 (with the consent of the Commission given under paragraph 5 of Schedule 2) to include assets and liabilities of a subsidiary of that licensed insurer, accounts dealing with the state of affairs and the profit or loss of the licensed insurer and that subsidiary.

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

Audit of accounts.

36. (1) The accounts required to be prepared by virtue of section 35

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shall be audited by an auditor in accordance with the requirements of Schedule 3; and that auditor shall report on those accounts in accordance with the requirements of that Schedule.

(2) The Commission may by regulation amend any of the provisions of Schedule 3.

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

37. (1) The annual return required to be prepared by virtue of section 33, the accounts required to be prepared by virtue of section 35, the report of the auditor made in pursuance of section 36 and the actuarial report (if applicable) required to be prepared by virtue of section 41 shall be deposited with the Commission within a period of four months (or such additional time as the Commission may in any particular case allow) beginning on the close of the financial year to which the accounts relate.

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

(3) Without prejudice to the provisions of section 33(1) and subsection (1) of this section, where a licensed insurer wishes to change the date of the close of its financial year, and thereby to extend the period of its financial year, it must, unless the Commission directs otherwise in any particular case, submit an annual return in respect of the period up to the anniversary of the end of the period of

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the last annual return; but for the purposes of this subsection the Commission may, at the request of the insurer, modify the requirements of section 33 and of any regulations thereunder in their application to that insurer.

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

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

Friendly societies and insurers authorised in European Economic Area, etc.

38. (1) This Part of this Law applies, subject to the adaptations set out in subsection (2), in relation to -

- (a) a friendly society registered under an enactment relating to friendly societies and recognised by the Commission as being such a society;
- (b) a syndicate or pool; and
- (c) a person other than a Bailiwick body if -
 - (i) the law of a State within the European Economic Area, or of any other country recognised by the

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Commission for the purposes of this section, recognises that person as a national of that or another such State or country; and

- (ii) the only insurance business which that person carries on in the Bailiwick is business of a description which that person is authorised to carry on in a State within the European Economic Area or in any other country recognised by the Commission for the purposes of this section and which would be lawfully carried on if it were carried on in that State or country.

(2) The adaptations referred to in subsection (1) of this section are as follows -

- (a) a general representative within section 29(1)(a) must be ordinarily resident in the Bailiwick and approved by the Commission under section 29(1)(a)(ii), but need not be an executive director, employee or agent of the insurer;
- (b) sections 25 to 28, 30 to 32, 34 to 36 and 39 to 43 do not apply; and
- (c) such other adaptations as the Commission may prescribe by regulation.

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(3) This section is without prejudice to sections 12 and 67 to 74, and is not to be construed as restricting the Commission's powers under those sections.

*Special requirements in respect of insurers
with domestic business*

Audited accounts of insurer with domestic business to be made available to policyholders.

39. (1) A licensed insurer which carries on domestic business shall, subject to subsection (2), make available on request, and on payment of a reasonable sum, to all policyholders and potential policyholders of the insurer copies of the accounts required to be prepared by virtue of section 35 and of the auditor's report thereon made in pursuance of section 36 not later than one month after the close of the period within which those accounts are required to be deposited with the Commission under section 37(1).

(2) The accounts and the report required to be made available under subsection (1) may be so made available in an abridged form approved by the Commission in any particular case containing such information as may be so approved.

*Special requirements in respect of insurers
with long term business*

Appointment of actuary by insurer with long term business.

40. (1) A licensed insurer shall, not later than the date on which it

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

(2) A licensed insurer making an appointment under this section shall forthwith give the Commission written notice stating -

(a) the date of the appointment; and

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

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

(3) If a licensed insurer fails to make a fresh appointment of an actuary in accordance with the provisions of subsection (1), the insurer shall not until such an appointment is made effect any contract which constitutes long term business without the written permission of the Commission.

(4) An actuary of a licensed insurer who resigns or is removed before, or who is not reappointed or does not seek re-appointment upon, the expiration of his term of office shall, within a period of 7 days after the day of the resignation, removal or (as the case may be) expiration of his term of office, send to the

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Commission -

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

(5) A licensed insurer which contravenes any provision of subsection (1), (2) or (3) shall be guilty of an offence.

(6) An actuary who without reasonable excuse contravenes any provision of subsection (4) shall be guilty of an offence.

Periodic actuarial investigation of insurer with long term business.

41. (1) A licensed insurer which carries on long term business shall -

- (a) cause an investigation and report to be made, in accordance with Relevant Professional Standards, by the person who for the time being is the actuary to the licensed insurer under section 40(1), into the financial condition of the licensed insurer in respect of that business as at the close of every period to which any accounts required to be prepared by virtue of section 35 relate;

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- (b) where that investigation establishes a deficit on any fund or any part of any fund, immediately cause a transfer to be made from shareholders' funds of sufficient assets to make good the deficit up to the value of all shareholders' funds;
 - (c) deposit the actuary's report on his investigation with the Commission at the same time as the accounts required to be deposited under section 37(1); and
 - (d) not later than one month after the close of the period within which that report is required to be deposited with the Commission, make copies of that report (or of a report in abridged form and containing such information as the Commission may approve) available to all policyholders of the insurer on payment of a reasonable sum.
- (2) An investigation to which subsection (1) relates shall include -
 - (a) a valuation of the liabilities of the insurer attributable to the long term business of the insurer;
 - (b) the establishment of the surplus, if any, on the insurance funds established under section 42 which, subject to section 43, may be transferred to shareholders' funds and be available for distribution;

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- (c) the establishment of the deficit, if any, on the insurance funds established under section 42.

Separation of assets and liabilities attributable to long term business.

42. (1) Where a licensed insurer carries on long term business -

- (a) the insurer shall maintain an account in respect of that business; and
- (b) the receipts of that business shall be entered in the account maintained for that business and shall be carried to, and shall form, a separate insurance fund with an appropriate name.

(2) If any part of the long term business of a licensed insurer consists of contracts under which the benefits payable to the policyholders are determined directly by reference to the value of, or the income from, property of any description, the receipts of that part of that business shall be carried to, and shall form, a separate part of the fund maintained under subsection (1): and references in this Law to any part of the long term business of an insurer or to any part of the fund maintained under subsection (1) are references to such a part of that business or to such a part of that fund, as the case may be, as is mentioned in this subsection.

(3) A licensed insurer which carries on long term business shall maintain such accounting and other records as are necessary for identifying -

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- (a) the assets representing the fund maintained by the insurer under subsection (1) and each part of that fund; and
- (b) the liabilities attributable to that business and to each part of that business.

Restriction on transfer of assets of insurer with long term business.

43. (1) A licensed insurer which carries on long term business shall not-

- (a) transfer or otherwise apply assets representing the fund maintained by the insurer under section 42(1), otherwise than in respect of claims and expenses relating to that business, except out of any established surplus in that fund;
- (b) transfer or otherwise apply assets representing any part of the fund maintained under section 42(1), otherwise than in respect of claims and expenses relating to that part of that business, except out of any established surplus in that part of that fund;
- (c) transfer any surplus in any such fund or in any part of any such fund to shareholders' funds until all established deficits have been eliminated;

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- (d) make any transfers from any fund maintained under section 42(1) to shareholders' funds except out of an established surplus; or
- (e) where the licensed insurer is a company, declare or pay any dividend until all established deficits on any fund or any part of any fund maintained under section 42(1) have been eliminated.

(2) The provisions of subsection (1)(e) are in addition to the provisions of section 33 of the Companies (Guernsey) Law, 1994 and sections 61 and 62 of the Companies (Alderney) Law, 1994.

(3) In subsection (1) "established surplus" and "established deficit" mean any amount shown by an investigation to which section 41 applies to be an amount by which the assets representing the fund maintained by the insurer under section 42(1) or, as the case may be, representing any part of that fund, exceed or, as the case may be, are less than the liabilities of the insurer attributable to the long term business carried on by the insurer or, as the case may be, attributable to any part of that business.

*Transfers of long term business:
sanction of Court required*

Transfers of long term business.

44. (1) A scheme under which all or any of the long term business of one body ("the transferor") is to be transferred to another body ("the transferee")

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shall not -

- (a) if either or both of those bodies is a licensed insurer;
- (b) in respect of any policy comprised in that business written under Guernsey law; or
- (c) in respect of any policy comprised in that business issued to a person resident in the Bailiwick;

be carried out without the sanction of the Royal Court under this section.

(2) An insurer which contravenes any provision of subsection (1) is guilty of an offence.

Procedure with respect to applications.

45. (1) Either the transferor or the transferee may apply to the Royal Court for an order under section 44 sanctioning a scheme.

(2) The Royal Court shall not determine an application for an order under section 44 sanctioning a scheme unless -

- (a) the application is accompanied by a report on the terms of the scheme by an independent actuary; and
- (b) the Royal Court is satisfied that the requirements of subsection (3) have been complied with.

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- (3) The requirements referred to in subsection (2) are -
- (a) that a notice has been published in La Gazette Officielle on at least two occasions stating -
- (i) the date and time when the application is to be made;
- (ii) that copies of the application and of the report referred to in subsection (2)(a) are available for inspection at all reasonable times at an address in Guernsey set out in the notice and that copies of that report are available for purchase there upon payment of a reasonable sum; and
- (iii) that any person (including, without limitation, any employee of the transferor or transferee) alleging that he would be adversely affected by the carrying out of the scheme is entitled to oppose the application at that time;
- (b) except where the Royal Court otherwise directs, that a statement -
- (i) setting out the terms of the scheme;

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(ii) containing a summary of the report referred to in subsection (2)(a) sufficient to indicate the opinion of the actuary as to the likely effects of the scheme on the long term policyholders of the bodies concerned; and

(iii) stating that copies of that report are available for purchase at an address in Guernsey set out in the statement on payment of a reasonable sum;

has been sent to each of the long term policyholders of the bodies concerned and (where any of the bodies concerned is a company) to every member of that company;

(c) that a copy of the application, of the report referred to in subsection (2)(a) and of any statement sent out under paragraph (b) has been served on the Commission and that a period of not less than 21 days has elapsed since the date of service;

(d) that a period of not less than 21 days has elapsed since the notice referred to in paragraph (a) was last published in La Gazette Officielle; and

(e) that copies of the application and of the report referred to in subsection (2)(a) have, throughout the period since

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the notice referred to in paragraph (a) was last published in La Gazette Officielle, been available for inspection by policyholders or their proxies at an address in Guernsey set out in that notice and that copies of that report have been available for purchase there during that period upon payment of a reasonable sum;

and in this subsection the expression "an address in Guernsey" means -

(A) in a case in which the transferor or transferee is an Alderney body, an address in Guernsey and in Alderney, and

(B) in a case in which the transferor or transferee is a Sark body, an address in Guernsey and in Sark.

(4) At the hearing of an application for an order under section 44 sanctioning a scheme the following persons shall be entitled to be heard -

(a) the Commission, and

(b) any person who alleges that he would be adversely affected by the carrying out of the scheme.

Determination of applications.

46. The Royal Court shall not make an order under section 44 sanctioning the scheme unless -

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- (a) the Court is satisfied that the transferee is, or will be immediately after the making of the order -
 - (i) licensed under this Law in respect of long term business of the class or classes to be transferred under the scheme; or
 - (ii) licensed to carry on insurance business of the descriptions concerned in the country outside the Bailiwick where the transferee is to undertake its obligations under the policies to be transferred to it; and
- (b) except where all of the policies to be transferred are contracts of re-insurance, the Commission has certified -
 - (i) in a case within paragraph (a)(i), that the transferee possesses the necessary margin of solvency under this Law after taking into account the proposed transfer; or
 - (ii) in a case within paragraph (a)(ii), that the relevant supervisory authority in the country concerned has been notified of the proposed scheme by the Commission, and either has consented, or has not refused consent within

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three months of being so notified.

Rights of policyholders.

47. (1) This section applies where the Royal Court makes an order under section 44 sanctioning a scheme.

(2) The Court shall direct that -

(a) notice of -

(i) the making of the order and of any other order giving effect to the transfer; and

(ii) the execution of any instrument giving effect to the transfer;

shall be published by the transferor and the transferee in La Gazette Officielle and in any other relevant jurisdiction; and

(b) the notice shall specify the period during which any policyholder may exercise any right to cancel the policy;

and the instrument or order shall not bind the policyholder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.

Supplementary provisions.

48. (1) Where the Royal Court makes an order under section 44 sanctioning a scheme the Court may, either by that order or by any subsequent order, make provision for all or any of the following matters -

- (a) the transfer to the transferee of the whole or any part of the undertaking and of the property and liabilities of the transferor;
- (b) the allotting or appropriation by the transferee of any shares, debentures, policies or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;
- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
- (d) the dissolution, without winding up, of the transferor; and
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(2) Where an order under section 44 sanctioning a scheme provides for the transfer to the transferee of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the

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order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the scheme to cease to have effect; and, where the liabilities transferred are liabilities under policies covered by the scheme, it is immaterial for these purposes that the law applicable to any of those policies may be the law of a place outside the Bailiwick.

(3) Where a scheme is sanctioned by an order of the Royal Court under section 44, the transferee shall, within a period of 10 days beginning on the date on which the order is made or such longer period as the Commission may allow, deposit two office copies of the order with the Commission.

Notification of significant shareholdings

Notification of acquisition of significant shareholding.

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

PART IV

WINDING UP OF LICENSED INSURERS

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Preliminary

Application of this Part.

50. This Part of this Law applies to licensed insurers which are Guernsey companies or Alderney companies; and subsections (2) and (3) of section 54 apply in addition to any licensed insurer which is an unincorporated Bailiwick body.

Winding up

Deemed insolvency of insurer with general business.

51. (1) A licensed insurer which is a Guernsey company or an Alderney company and which carries on general business shall be deemed to be unable to pay its debts for the purposes of -

- (a) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company); or
- (b) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company);

if at any time it does not comply with the margin of solvency requirement applicable to it by virtue of section 30; and the provisions of those Laws as to winding up shall, subject to the provisions of subsection (3), have effect accordingly.

(2) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with, whether by virtue of section 54 or otherwise.

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(3) Notwithstanding the provisions of this section, the Royal Court or, as the case may be, the Court of Alderney may, whether to protect the interests of the public, policyholders or potential policyholders or for any other reason, and without prejudice to its powers under the Companies (Guernsey) Law, 1994 or, as the case may be, the Companies (Alderney) Law, 1994, decline to make a winding up order in respect of a company which does not comply with the margin of solvency requirement applicable to it by virtue of section 30 if the Court is satisfied that it would not be reasonable or expedient to make such an order; and in any such case the Court may make such alternative order, subject to such conditions, as it thinks fit.

Winding up of Guernsey or Alderney companies under Companies Laws.

52. (1) Subject to the provisions of subsection (2) -

- (a) the Royal Court may order the winding up, in accordance with the Companies (Guernsey) Law, 1994, of a licensed insurer which is a Guernsey company; and
- (b) the Court of Alderney may order the winding up, in accordance with the Companies (Alderney) Law, 1994, of a licensed insurer which is an Alderney company;

and the provisions of those Laws shall apply accordingly subject to the modification that the insurer may be ordered to be wound up on the application of -

- (i) any 10% or more of the number of its policyholders, in a case where the insurer has

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more than 100 policyholders;

- (ii) any 10 or more of its policyholders, in any other case.

(2) An application shall not be presented to the Royal Court or, as the case may be, to the Court of Alderney except by leave of that Court, and leave shall not be granted until a prima facie case has been established to the satisfaction of that Court and until security for costs for such amount as that Court thinks reasonable has been given.

Winding up on application of Commission.

53. (1) The Commission may present an application for the winding up in accordance with the Companies (Guernsey) Law, 1994 of a licensed insurer which is a Guernsey company, or in accordance with the Companies (Alderney) Law, 1994 of a licensed insurer which is a Alderney company, on the ground -

- (a) that the insurer is unable to pay its debts within the meaning of -

- (i) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company); or
- (ii) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company);

as those sections have effect in relation to a licensed

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insurer by virtue of section 51 of this Law;

(b) that the insurer has failed to satisfy an obligation to which it is or was subject by virtue of this Law or any Ordinance, regulation or rule under it;

(c) that -

(i) the insurer has failed to satisfy an obligation imposed by section 37 or 41(1)(b) or has contravened any condition or direction imposed under section 12 or 16; or

(ii) the Commission is unable to ascertain the financial position of the insurer; or

(d) that the Royal Court (in the case of a Guernsey company) or the Court of Alderney (in the case of an Alderney company) is of the opinion that it is just and equitable that the company should be wound up;

and section 52(2) does not apply in the case of an application presented by the Commission pursuant to this subsection.

(2) In any proceedings on an application to wind up a licensed insurer presented by the Commission under subsection (1), evidence that the insurer was insolvent -

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- (a) at the close of the period to which the accounts of the insurer last deposited under section 37 relate; or
- (b) at any date or time specified in a requirement under any of sections 67 to 72;

shall be evidence that the insurer continues to be unable to pay its debts, unless the contrary is proved.

Winding up, etc. of insurer with long term business.

54. (1) Notwithstanding the provisions of Part XV of the Companies (Guernsey) Law, 1994 (in the case of a licensed insurer which is a Guernsey company) or Part XVII of the Companies (Alderney) Law, 1994 (in the case of a licensed insurer which is an Alderney company), a licensed insurer which carries on long term business shall not be wound up voluntarily.

(2) Subject to the provisions of subsection (3), in any winding up or other dissolution of a licensed insurer which is -

- (a) a Guernsey company or an Alderney company; or
- (b) an unincorporated Bailiwick body;

and which carries on long term business -

- (i) the assets representing the fund maintained by the

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insurer in respect of its long term business shall be available only for meeting the liabilities of the insurer attributable to that business;

- (ii) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other business.

(3) Where the value of the assets mentioned in subparagraph (i) or (ii) of subsection (2) exceeds the amount of the liabilities mentioned in that subparagraph the restriction imposed by subsection (2) shall not apply to so much of those assets as represents the excess.

Continuation of long term business of insurer in liquidation.

55. (1) This section shall have effect in relation to the winding up of a licensed insurer which is a Guernsey company or an Alderney company and which carries on long term business.

(2) The liquidator shall, unless the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) orders otherwise, carry on the long term business of the insurer with a view to its being transferred as a going concern to another body, whether an existing body or a body formed for that purpose; and in carrying out that business the liquidator may agree to the variation of any contracts of insurance in existence when the Act of Court ordering the winding up is made, but shall not effect any new contracts of insurance.

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(3) The Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the value of the contracts made by the insurer in the course of carrying on its long term business.

(4) The Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, on the application of the liquidator or the Commission, appoint an independent actuary to investigate the long term business of the company and to report to the liquidator and to the Commission on the desirability or otherwise of that business being continued and on any reduction in the value of the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

(5) The provisions of section 44 shall not apply in the course of the winding up of a licensed insurer which carries on long term business and which would be "the transferor" for the purposes of that section.

Responsibility for fraudulent trading disclosed in course of winding up.

56. (1) If, in the course of the winding up of a licensed insurer which is a Guernsey company or an Alderney company, it appears that any insurance business of the insurer has been carried on -

- (a) with intent to defraud creditors, shareholders, policyholders or former policyholders of the insurer or creditors of any other person; or

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(b) for any fraudulent purpose,

the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company), on the application of the liquidator or any creditor, shareholder, policyholder or former policyholder of the insurer, may, if the Court thinks it proper to do so, and after giving him the opportunity to be heard, declare that any person who was knowingly party to the carrying on of that business in that manner shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the insurer as the Court may direct.

(2) Where the Royal Court or the Court of Alderney makes a declaration under subsection (1), it may make such order as it thinks proper for the purpose of giving effect to that declaration.

(3) Where the Royal Court or the Court of Alderney makes an order under subsection (2) directing that any money or property shall be repaid or restored to a licensed insurer which carries on long term business or that any sum be contributed to its assets, then, if and in so far as the wrongful act which is the reason for the making of the order related to assets representing a fund maintained by the insurer in respect of that business, the Court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Law as assets of that fund, and this Law shall have effect accordingly.

(4) The provisions of this section shall have effect notwithstanding that the person concerned may be liable to other civil action or to criminal prosecution

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in respect of the matters on the ground of which a declaration under subsection (1) is to be made.

(5) A person who is knowingly party to the carrying on by a licensed insurer of any insurance business with such intent or for such purpose as is mentioned in subsection (1) is guilty of an offence.

Reduction of contracts as alternative to winding up.

57. In the case of a licensed insurer which has been proved to be unable to pay its debts, the Royal Court (in the case of a licensed insurer which is a Guernsey company) or the Court of Alderney (in the case of a licensed insurer which is an Alderney company) may, if it thinks it proper to do so, and having regard to the best interests of the insurer's policyholders, reduce the amount of the contracts of the insurer on such terms and subject to such conditions as the Court thinks just, in place of ordering the winding up of the insurer.

Winding up of unsuccessful applicant, etc.

58. If the Commission refuses, pursuant to the provisions of Part I of this Law, to license a Guernsey company or an Alderney company as an insurer and it appears to the Commission that -

- (a) the company is unable to pay its debts within the meaning of -
 - (i) section 95 of the Companies (Guernsey) Law, 1994 (in the case of a Guernsey company); or

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- (ii) section 126 of the Companies (Alderney) Law, 1994 (in the case of an Alderney company);

as those sections have effect in relation to a licensed insurer by virtue of section 51 of this Law; or

- (b) the criteria specified in Schedule 7 are not fulfilled -

- (i) in relation to the company; or

- (ii) in relation to any person who is a director or controller of the company;

the Commission may present an application for the winding up of the company in accordance with Part XVI of the Companies (Guernsey) Law, 1994 or, as the case may be, Part XVIII of the Companies (Alderney) Law, 1994 as if the company were a licensed insurer.

PART V

SUPPLEMENTARY REGULATORY MATTERS

Insurance transactions in breach of Law

Insurance transactions in breach of Law.

59. It is hereby declared for the avoidance of doubt that no transaction in the course of the effecting or carrying out of a contract of insurance shall be void or voidable by reason only that at the time of that transaction any party thereto is in

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breach of any provision of or any requirement arising under this Law or any Ordinance, regulation or rule made under it.

Notice of decisions

Notice of Commissions' decision to refuse licence, etc.

60. (1) Notice of a decision of the Commission required to be served under section 7(5), 10(5), 12(10), 13(5), 14(7), 15(7) or 16(9) -

- (a) shall state the grounds of the Commission's decision;
and
- (b) shall give particulars of the right of appeal conferred by section 63.

(2) Where -

- (a) a ground for a decision mentioned in section 7(5), 10(5), 12(10), 13(5), 14(7), 15(7) or 16(9) is that any criterion of paragraph 3 of Schedule 7 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a condition of a licence, or a direction under section 16(1), requires the removal or replacement of any person as a director, controller, partner, manager, general representative, employee, auditor or actuary;

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the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 63.

Representations and appeals

Representations concerning decisions of Commission.

61. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 63, the procedure prescribed in this section shall be followed.

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

- (a) stating that the Commission is proposing to take the decision;
- (b) stating the grounds for the proposed decision;
- (c) setting out particulars of any condition or direction proposed to be imposed, varied or rescinded;
- (d) stating that the person concerned may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the

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Commission may from time to time determine; and

- (e) giving particulars of the right of appeal which would be exercisable under section 63 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 paragraph 3 of Schedule 7 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 63 if the Commission were to take the proposed decision.

(4) The Commission shall consider any representations made in

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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, policyholders or potential policyholders 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.

Disclosure of reasons for decisions of Commission.

62. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 63, the person upon whom the right of appeal is conferred may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the decision.

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

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

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- (c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 63.

Appeals against decisions of Commission.

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

- (a) to refuse an application by him for a licence;
- (b) to suspend or revoke his licence;
- (c) to impose, vary or rescind any condition in respect of his licence;
- (d) not to allow the surrender of his licence to be withdrawn, or to refuse consent to the surrender of his licence;
- (e) to refuse consent under section 4(1)(b) to carry on, or hold himself out as carrying on, insurance business in or from within a country outside the Bailiwick, or to revoke any such consent, or to impose, vary or rescind any condition in respect of any such consent;

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- (f) to impose a licence on him pursuant to section 10(1);
- (g) to give him directions under section 16, 28, 64 or 68(6) or to vary or rescind any direction so given;
- (h) to refuse his application under section 19(1), or to revoke a permission granted to him under that section, or to impose, vary or rescind any condition in respect of any such permission;
- (i) to serve a notice on him under section 20 objecting to a name;
- (j) to omit, pursuant to the provisions of section 62(2), any matter from a statement of reasons given to him;
- (k) to serve a notice on him under section 68(1), (2), (3) or (7), 69(1) or (3) or 70(1);
- (l) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;

may appeal to the Court against the decision.

(2) Where -

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- (a) a ground for a decision described in subsection (1) is that any criterion of paragraph 3 of Schedule 7 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as a director, controller, partner, manager, employee, general representative, auditor or actuary;

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

(3) A person aggrieved by a decision of the Commission to serve a notice of objection on him under section 25 or 26 may appeal to the Court against the decision.

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

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

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

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

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

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct); or
- (b) make such other order as the Court considers just;

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

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

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

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

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

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

(9) For the purposes of determining an appeal under this section against a decision described in subsection (1)(j) to omit, pursuant to the provisions of section 62(2), any matter from a statement of reasons, the Court may examine the information the disclosure of which the Commission considers would be prejudicial; and unless the Court orders otherwise the information shall not, pending the determination of the appeal, be disclosed to the appellant or any person representing him.

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

(a) where the person described in subsection (1), (2) or, as the case may be, (3) -

(i) is an Alderney company; or

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

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the Court of Alderney;

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

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

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

Advertising

Restrictions as to insurance advertisements.

64. (1) A person shall not issue or cause to be issued an insurance advertisement inviting persons in the Bailiwick to enter into or to offer to enter into a contract of insurance with an insurer which is not a recognised insurer in respect of the contract in question.

(2) For the purposes of this section and of any regulations made under it -

(a) an insurance advertisement issued by any person on behalf of another person shall be treated as an insurance advertisement issued by that other person;

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(b) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited; and

(c) the issue of an advertisement containing an invitation -

(i) to enter into or offer to enter into a contract of insurance with; or

(ii) to become a client of or use services provided by;

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

(3) Without prejudice to the provisions of subsection (1), the Commission may make regulations in respect of the issue, form and content of insurance advertisements.

(4) Regulations under this section may, without prejudice to the generality of subsection (3) -

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

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- (b) make provision as to the matters which must or which may not be included in insurance advertisements;
 - (c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission;
 - (d) make different provision in relation to different descriptions of insurance business.
- (5) If the Commission considers that -
- (a) any insurance advertisement issued or proposed to be issued is misleading; or
 - (b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of this section or any regulation under it;

the Commission may, subject to the provisions of section 61, give the advertiser a direction under this section.

- (6) A direction under this section may contain any or all of the following -

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- (a) a prohibition on the issue of any advertisements or any advertisements of a specified description;
 - (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction;
 - (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified description;
 - (d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner.
- (7) A direction under this section -
- (a) may have immediate effect;
 - (b) shall give particulars of the right of appeal conferred by section 63; and
 - (c) if given orally, shall be confirmed by the Commission in writing not later than the next working day.

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(8) A direction under this section may be varied by a further direction or rescinded by the Commission by notice in writing to the advertiser concerned.

(9) Subject to subsection (10), a person who -

- (a) contravenes any provision of subsection (1);
- (b) issues or causes to be issued an advertisement in contravention of regulations under this section or who otherwise contravenes any provision of such regulations;
or
- (c) issues or causes to be issued an advertisement in contravention of a direction under this section or who otherwise contravenes any provision of such a direction;

is guilty of an offence.

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

- (a) he received the advertisement for publication in the ordinary course of his business;
- (b) the matters contained in the advertisement were not

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(wholly or in part) devised or selected by him or by any person under his direction or control; and

- (c) he did not know and had no reason to believe that publication of the advertisement would constitute an offence.

Non-recognised and unlicensed insurers

Information in invitations relative to unlicensed insurers.

65. (1) This section applies to any case, other than a case specified in paragraph 2 of Schedule 4, in which a person, in the course of carrying on any business or profession, invites a person in the Bailiwick to take any step with a view to entering into or offering to enter into a contract of insurance with an insurer which is neither licensed nor exempted from licensing under Part I in respect of the contract in question.

(2) In any case to which this section applies the person who issues the invitation shall provide any person to whom the invitation is issued, in the manner specified in paragraph 1 of Schedule 4, with information indicating that the insurer to which the invitation relates is neither licensed nor exempted from licensing under Part I in respect of the contract in question; and a person who fails to comply with the provisions of this subsection is guilty of an offence.

(3) The Commission may by regulation amend any of the provisions of Schedule 4.

Information as to services for unlicensed insurers.

66. (1) A person who provides any insurance managerial, insurance advisory or insurance consultancy services, or any administrative or secretarial services, for an insurer who is neither licensed nor exempted from licensing under Part I shall -

- (a) as soon as practicable after commencing to provide those services, inform the Commission in writing of the name of the insurer and of the nature of those services;
- (b) inform the Commission in writing, as soon as practicable, of any change in the nature of those services;
- (c) furnish the Commission, as soon as practicable, with such further details as the Commission may from time to time reasonably require as to the insurer and the services provided.

(2) A person who, without lawful authority or excuse, contravenes any provision of, or any requirement arising under, subsection (1) is guilty of an offence.

(3) Subsection (1) does not apply -

- (a) in relation to the provision of actuarial services by an actuary or accountancy services by an accountant; or

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- (b) if the person providing the services has already furnished the information in question to the Commission, whether pursuant to the requirements of some other enactment or otherwise.

Power of Commission to obtain information

Site visits.

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

- (a) with a view to the performance of its supervisory and regulatory functions under this Law and the regulatory Laws; or
- (b) if it consider it desirable to do so for the protection of the interests of the public or the policyholders, potential policyholders or clients of a licensed insurer or the reputation of the Bailiwick as a finance centre;

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

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

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

(b) may put such questions and require such explanations;

as the Commission or that person thinks fit, being information, documents, questions and explanations relevant to the purpose mentioned in subsection (1) or relevant to the licensing of the insurer.

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

(4) Where a licensee or associated party fails to co-operate with the Commission or any person acting for and on behalf of the Commission when exercising or attempting to exercise their functions for the purposes of this section (whether by declining to reach agreement as to the making, timing or scope of a site visit, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Commission in deciding whether and in what manner to exercise its other functions conferred by or under this Law or the regulatory Laws.

(5) The provisions of this section are in addition to the other

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provisions of or under this Law.

Power to request and obtain information and documents.

68. (1) The Commission may, by notice in writing served on a licensee, require him to provide the Commission -

- (a) at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions;
- (b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on or on any aspect of any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may, by notice in writing served on a licensee-

- (a) require him to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified;
- (b) require him to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of

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evidence of such authority, such information and documents as the officer, servant or agent may specify;

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

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a licensee, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The power conferred by this section to require a person to produce any documents includes power -

(a) if the documents are produced, to take copies of them or extracts from them and to require -

(i) that person, or

(ii) any other person who is a present or past director, controller, partner, manager, employee or general representative of that licensee;

to provide an explanation of them; and

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

(5) If it appears to the Commission to be desirable to do so in the interests of the public or the clients, policyholders or potential policyholders of a licensee, or for the protection or enhancement of the reputation of the Bailiwick as a finance centre, the Commission may also exercise the powers conferred by this section in relation to any person who is or has at any relevant time been an associated party of the licensee.

(6) The foregoing provisions of this section shall apply in relation to a former licensee as they apply in relation to a licensee, but only, unless the Commission directs otherwise in any particular case, for a period of six years immediately after the date on which the former licensee ceased to be a licensee.

(7) The Commission may, by notice in writing served on any person who is or is to be a director, controller, partner, manager, employee or general representative of a licensee, require him to furnish the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(8) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to, where the licensee is a company, any person who is a significant shareholder of the licensee if the Commission considers that it is desirable to do so for the protection of the interests of the public or the policyholders,

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potential policyholders or clients of the licensee or the reputation of the Bailiwick as a finance centre.

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

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

- (a) in proceedings for an offence under subsection (9) or section 87(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(11) A notice under subsection (1), (2), (3) or (7) shall give particulars of the right of appeal conferred by section 63.

Investigations by inspectors.

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

- (a) the public or the licensee's clients, policyholders or potential policyholders; or
- (b) the reputation of the Bailiwick as a finance centre;

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appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on -

- (i) the nature, conduct or state of the licensee's business or any particular aspect of that business;
or
- (ii) the ownership or control of the licensee;

and the Commission shall give notice in writing of the appointment to the licensee concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any person who is or has at any relevant time been an associated party of the licensee under investigation.

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

(4) A licensee or party being investigated under subsection (1) or (2) and any person who is or has been a director, controller, partner, manager, employee, general representative, agent, banker, auditor, actuary, advocate or other legal adviser of a licensee or party being so investigated, or who has been appointed to make a report in respect of such a licensee or party under section 6(5), 36 or 68(1)(b), or who is or has been a significant shareholder in relation to such a licensee

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or party -

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that licensee or party; and the inspector may take copies of or extracts from any documents produced to him under this paragraph;
- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that licensee or party; and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) An inspector shall, if so required, produce evidence of his authority.

(6) A person who without reasonable excuse -

- (a) contravenes any provision of subsection (4); or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred

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by this section;

is guilty of an offence.

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

- (a) in proceedings for an offence under subsection (6) or section 87(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) Subject to the provisions of subsection (9), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the licensee (the business, ownership or control of which is being investigated under subsection (1)); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that licensee as a civil debt.

(9) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a licensee as a civil debt where the court is satisfied that -

- (a) the sum is not reasonable in amount or was not reasonably incurred; or
- (b) the Commission acted unreasonably, frivolously or

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vexatiously in incurring that sum.

(10) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 63.

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

- (a) at a time when he was a licensee;
- (b) in the case of a person who was at any time a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, at any such time; and
- (c) in the case of a person who was at any time carrying on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986, at any such time.

Investigation of suspected offences.

70. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1, 3, 4, 12 or 18, the Commission may by notice in writing require that person or any other person -

- (a) to furnish, at such place as may be specified in the notice

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and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence;

- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his authority -

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1);
- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice under subsection (1) or obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

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

- (a) in proceedings for an offence under subsection (3) or section 87(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(5) A notice under subsection (1) shall give particulars of the right of appeal conferred by section 63.

Power of Bailiff to grant warrant.

71. (1) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath -

- (a) that a notice has been served under section 68 on any person and that there are reasonable grounds for suspecting -
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice;
 - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 68; or

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- (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii);
- (b) that it is not practicable to serve a notice under section 68; or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
 - (i) it would not be complied with;
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed; or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions;

he may grant a warrant conferring the powers set out in section 72.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 69 to carry out an investigation under that section, and that there are reasonable grounds for suspecting -

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- (a) that an offence under this Law has been committed in relation to the investigation;
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation;
or
- (c) that, if a warrant were not granted -
 - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed; or
 - (ii) the investigation might be seriously prejudiced;

he may grant a warrant conferring the powers set out in section 72.

(3) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 1, 3, 4, 12 or 18 and that -

- (a) a person has failed to comply with any requirement of a notice under section 70(1) or any other requirement imposed by or under section 70;
- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents

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furnished pursuant to such a notice or requirement;

(c) it is not practicable to serve a notice under section 70(1);
or

(d) there are reasonable grounds for suspecting that if such a
notice were served -

(i) it would not be complied with;

(ii) any documents to which it would relate would be
removed, tampered with or destroyed; or

(iii) the service of the notice might seriously prejudice
the investigation of the suspected offences;

he may grant a warrant conferring the powers set out in section 72.

(4) In this section the expression "**Bailiff**" means -

(a) where the warrant is to be executed in Alderney, the
Chairman of the Court of Alderney or, if he is
unavailable, a Jurat thereof;

(b) where the warrant is to be executed in Sark, the
Seneschal or his deputy;

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- (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué.

Powers conferred by Bailiff's warrant.

72. (1) A warrant granted under section 71(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -

- (i) which are occupied by the person upon whom the notice under section 68 was or could be served;

- (ii) upon which the documents to which the notice under section 68 relates are reasonably believed to be; or

- (iii) where no notice under section 68 has been served, upon which the documents to which the notice would relate are reasonably believed to be;

using such force as is reasonably necessary for the purpose;

- (b) to search the premises and, in relation to any documents-

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(i) which were required by the notice under section 68; or

(ii) where no notice under section 68 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 68;

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions which could have been put to him under section 68;

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);

(iii) to make an explanation of any such documents.

(2) A warrant granted under section 71(2) shall authorise any

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officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant, being premises -

(i) which are occupied by the licensee or other person being investigated by inspectors under section 69; or

(ii) upon which any documents to which the investigation under section 69 relates are reasonably believed to be;

using such force as is reasonably necessary for the purpose;

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 69, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in, or of a class or

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description specified in, the warrant -

- (i) to answer any questions relevant to the investigation under section 69;
- (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);
- (iii) to make an explanation of any such documents.

(3) A warrant granted under section 71(3) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -
 - (i) which are occupied by the person upon whom the notice under section 70(1) was served;
 - (ii) upon which there are reasonably believed to be the documents to which the notice under section 70(1) relates; or
 - (iii) where no notice under section 70(1) has been served, upon which the documents to which the

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notice would relate are reasonably believed to be;

using such force as is reasonably necessary for the purpose;

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer questions relevant for determining whether he or any other person has committed an offence under section 1, 3, 4, 12 or 18;
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);
 - (iii) to make an explanation of any such documents.

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(4) A warrant granted under section 71 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(5) Any documents of which possession is taken under the powers conferred by a warrant granted under section 71 may be retained -

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(6) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 71 is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed under a warrant granted under section 71 may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 87(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

Legal professional privilege, liens and duties of confidentiality.

73. (1) Nothing in -

(a) section 67, 68, 69 or 70; or

(b) a warrant granted under section 71;

shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(2) Where a person claims a lien on a document, its production under -

(a) section 67, 68, 69 or 70; or

(b) a warrant granted under section 71;

is without prejudice to his lien.

(3) A requirement imposed by or under -

(a) section 67, 68, 69 or 70; or

(b) a warrant granted under section 71;

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shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Falsification, etc, of documents during investigation.

74. A person -

- (a) to whose premises a site visit under section 67 has been or is to be made or who knows or has reasonable grounds to suspect that the Commission has requested or is likely to request that arrangements for such a site visit be made; or
- (b) upon whom a notice under section 68, 69 or 70 has been served or who knows or has reasonable grounds to suspect -
 - (i) that such a notice is likely to be served on him; or
 - (ii) that an inquiry or investigation is being or is likely to be carried out under section 68, 69 or 70;

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of,

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documents which he knows or has reasonable grounds to suspect -

- (A) would be inspected or requested during such a site visit or are or would be relevant thereto;
- (B) are or would be specified in such a notice; or
- (C) are or would be relevant to such an inquiry or investigation;

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

Various enforcement powers of Commission

Repayment of monies from unlawful business.

75. (1) If on the application of the Commission it appears to the Court that a person has carried on business in contravention of this Law, the Court may -

- (a) order him and any other person who appears to the Court to have been knowingly concerned in the contravention, forthwith or at such time as the Court may direct, to repay monies accepted from, or paid over (whether to him or to any other person) by,

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policyholders, clients or other persons in the course of his so carrying on that business; or

- (b) appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover those monies.

(2) If on the application of the Commission it appears to the Court that profits have accrued to a person as a result of any insurance business having been carried on in contravention of this Law, the Court may order him to pay to Her Majesty's Sheriff, or may appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover from him, such sum as appears to the Court to be just having regard to the profits appearing to the Court to have accrued to him.

(3) In deciding whether and on what terms to make an order under this section the Court shall have regard to the effect that payment or repayment pursuant to the order would have on the solvency of the person concerned and on his ability to carry on his business in a manner satisfactory to his creditors.

(4) Any amount paid to Her Majesty's Sheriff or recovered by a receiver pursuant to this section shall be distributed among such persons as the Court may direct, being -

- (a) persons appearing to the Court to have been the policyholders or clients in respect of whom the business as a result of which the monies or profits accrued was

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carried on; or

(b) such other persons as the Court thinks just.

(5) On an application under this section the Court may require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what monies or profits have accrued to him as mentioned in subsection (1) or (2) and for determining how any amounts are to be distributed under this section; and the Court may require any such accounts or information to be verified in such manner as it may direct.

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

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

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

(7) In this section "**Her Majesty's Sheriff**" means -

(a) where the order was made by the Court of Alderney, the Clerk of the Court of Alderney;

(b) where the order was made by the Court of the Seneschal,

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the Prévôt;

- (c) where the order was made by the Royal Court, Her Majesty's Sheriff.

Injunctions to restrain unlawful business, etc.

76. (1) If on the application of the Commission the Court is satisfied that -

- (a) there is a reasonable likelihood that a person will contravene -
 - (i) section 1, 3, 4, 12, 18 or 22;
 - (ii) a direction under section 16, 28 or 64; or
 - (iii) a regulation under section 64; or
- (b) a person may have contravened a section, direction or regulation mentioned in paragraph (a) and there is a reasonable likelihood that the contravention will continue or be repeated;

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have contravened a section, direction or regulation mentioned in

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subsection (1)(a), the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

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

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

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

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

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987ⁱ; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

General provisions as to receivers.

77. (1) Where the Court has appointed a receiver under section 75 or 76, the Court may, on the application of the receiver or of any other person appearing to the Court to have a sufficient interest in the matter, direct any person holding or having possession or control of any monies, profits or assets in respect of which the receiver was appointed to give possession of them to the receiver or otherwise to deal with them, or not to deal with them, in any manner specified by the Court.

(2) Where a receiver appointed under section 75 or 76 takes any action -

- (a) in relation to property which is not property in respect of which he was appointed, being action which he would be entitled to take if it were such property; or
- (b) in relation to property which is property in respect of which he was appointed, being action which he is not entitled to take;

ⁱ Ordres en Conseil Vol. XXX, p. 145.

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and, in either case, believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property, he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

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

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

Provision as to codes of practice, etc.

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

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

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may (without prejudice to any other power conferred by this Law as to the making of codes) issue such codes of practice as the Commission thinks necessary -

- (i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to policyholder protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by persons carrying on business regulated by this Law;
- (ii) generally for the purposes of this Law.

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

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

(4) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision

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of a code issued under this Law shall not of itself render him liable to any criminal proceedings; but -

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

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

(ii) the regulatory Laws;

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

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

Disclosure of information

Restrictions on disclosure of information.

79. (1) Subject to the provisions of section 80 -

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- (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.

80. Section 79 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;

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- (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 interest of the public;
- (d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation (actuarial or otherwise) or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought;
- (e) the disclosure by the Commission of information in the interests of clients or policyholders or in the public interest;

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- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions;
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any Ordinance, regulation or rule made under it;
- (h) the disclosure of information -
 - (i) for the purposes of the investigation, prevention or detection of crime; or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings;whether under this Law or otherwise;
- (i) the disclosure of information in connection with any other proceedings arising out of this Law;
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or actuary of a licensee

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or former licensee or by a person nominated or approved for the purposes of section 6(5) or 68(1)(b) or appointed under section 69;

- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under sections 67 to 72 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable;
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere;
- (m) the disclosure of information to a person or body responsible for a scheme for compensating clients or policyholders (whether in the Bailiwick or elsewhere) -
 - (i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge its functions; and

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- (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^j.

Information supplied to Commission by relevant overseas authority.

81. (1) Section 79 applies also in relation to information supplied to the Commission for the purposes of its functions conferred by or under this Law by a relevant supervisory authority in a country outside the Bailiwick.

- (2) Information described in subsection (1) may be disclosed only -
 - (a) with the consent of the persons whose consent is referred to in section 79(1); or
 - (b) for the purposes or in the circumstances described in section 80(a), (b) or (h).

Communications to Commission by auditors, etc.

^j Ordres en Conseil Vol. XXX, p. 243; section 21(2) was amended by Order in Council No. II of 1997 and by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002.

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82. (1) In relation to an auditor or actuary of a licensee, this section applies to any matter of which he becomes aware in his capacity as auditor or actuary and which relates to the business or affairs of -

- (a) the licensee; or
- (b) any associated party thereof.

(2) In relation to a person appointed to make a report under section 6(5), 36 or 68(1)(b), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which -

- (a) relates to the business or affairs of -
 - (i) the person in relation to which his report is made;
or
 - (ii) any associated party thereof; or
- (b) if his report relates to a person who is an associated party of another person, relates to the business or affairs of that other person.

(3) It is the duty of -

- (a) an auditor or actuary of a licensee; or

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- (b) a person appointed to make a report under section 6(5), 36 or 68(1)(b);

to communicate to the Commission matters to which this section applies and which the auditor, actuary or other person has reasonable cause to believe is, or is likely to be, of material significance for determining either -

- (i) whether a person is a fit and proper person to carry on insurance business; or
- (ii) whether the Commission should exercise its powers under this Law in order to protect policyholders from a significant risk of loss;

and no other duty to which the auditor, actuary or other person is subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(4) If it appears to the Commission that an auditor, actuary or person appointed to make a report under section 6(5), 36 or 68(1)(b) has failed to comply with a duty imposed on him by subsection (3), the Commission may report him to any authority, institution or professional body to whose rules or requirements he is subject, and may disclose any information with a view to the institution of disciplinary proceedings by such authority, institution or professional body, or otherwise for the purposes of such proceedings.

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

Meetings of Commission with auditors, actuaries, etc.

83. (1) The Commission may, whenever it thinks fit, and -

- (a) with a view to the performance of its functions under this Law and the regulatory Laws; or
- (b) if it consider it desirable to do so for the protection of the interests of the public or the policyholders, potential policyholders or clients of a licensed insurer or the reputation of the Bailiwick as a finance centre;

request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with a licensee's auditors, actuaries or general representatives, at which the Commission may discuss any aspect of the operation, regulation or licensing of the licensee.

(2) In the course of a meeting under this section the Commission or any person acting for and on behalf of the Commission -

- (a) may request the provision of such information and documents, in such form; and
- (b) may put such questions and require such explanations;

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as the Commission or that person thinks fit, being information, documents, questions and explanations relevant to the purposes mentioned in subsection (1)(a) and (b).

(3) Where a licensee fails to co-operate with the Commission or any person acting for and on behalf of the Commission when exercising or attempting to exercise their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in whatever form reasonably required, to the auditors, actuaries or general representatives in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Commission in deciding whether and in what manner to exercise its other functions conferred by or under this Law or the regulatory Laws.

(4) A licensee will be informed of any meeting arranged pursuant to this section and may attend any such meeting.

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

Policyholder protection

Power to establish compensation schemes.

84. (1) The States may by Ordinance establish any scheme considered by them to be desirable or expedient for the protection and compensation of clients and policyholders in cases where licensees or former licensees are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability

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incurred by them in connection with their business, being business regulated by this Law.

(2) Without prejudice to the generality of the foregoing, an Ordinance under subsection (1) may make provision in respect of all or any of the following matters -

- (a) the establishment of a fund for the protection and compensation of clients and policyholders;
- (b) the holding, management and application of the said fund;
- (c) the making of contributions to the fund and the levying thereof from licensees and former licensees;
- (d) the costs, expenses and other items which are to be chargeable to the fund;
- (e) claims against and payments from the fund, including the amount and proof thereof and the circumstances in which they are to be made;
- (f) the description and amount of the liabilities, and the description of the creditors, to be protected;
- (g) the liability of licensees and former licensees in respect

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of compensation payments;

- (h) the payment or repayment of claims, contributions or other monies, or any description thereof;
- (i) the tax treatment of contributions and repayments thereof;
- (j) the crediting of monies and income to the fund;
- (k) the establishment of a body to perform such functions in relation to the scheme, the fund and any other matter described in this subsection as may be assigned to it by Ordinance;
- (l) the constitution, membership and proceedings, the powers (including borrowing powers) and ancillary functions and the funding and accounting requirements of that body; and
- (m) the assignment, to the fund or to the body described in paragraph (k), by creditors who claim against the fund of their creditors' rights.

PART VI

GENERAL PROVISIONS

Ordinances and regulations

Ordinances, regulations, rules and codes.

85. (1) The States may by Ordinance -

- (a) make provision for the purpose of carrying this Law into effect and for prescribing any matter which may be prescribed under this Law by Ordinance of the States; and
- (b) without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules, amend any provision of this Law.

(2) The States may by Ordinance empower the Commission or the Committee to prescribe by regulation anything which may be prescribed under this Law by Ordinance of the States.

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

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

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rule -

- (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance, regulation or rule;
- (ii) provision amending or modifying any provision of this Law.

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

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

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- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(5) The Committee (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 104), consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(6) The requirement imposed by subsection (5) to consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

(7) Rules and codes under this Law shall be made by an instrument in writing and shall be available to the public in such manner and on such terms as to payment or otherwise as the Commission considers appropriate; and notice of their having been made shall be published in La Gazette Officielle.

Regulations: consultation with Committees and laying before States.

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

- (a) where made by the Commission, shall be made after

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consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark;

- (b) where made by the Committee, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark;
- (c) whether made by the Commission or by the Committee, shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

Criminal proceedings

Offences as to false or misleading information, etc.

87. (1) If a person -

- (a) in connection with an application for, or for the purposes of obtaining, a licence under this Law;

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- (b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, any provision of this Law or of any Ordinance, regulation or rule made under it;
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Law; or
- (d) in purported compliance with a requirement of an auditor appointed under section 34 or a person appointed to make a report under section 6(5)(a), 36 or 68(1)(b);

does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular;

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- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular;

he is guilty of an offence.

(2) A licensee, or any director, controller, partner, manager, employee or general representative of a licensee, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe-

- (a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation to the licensee; and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the licensee;

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is guilty of an offence.

(3) A person who -

- (a) by any statement, promise or forecast which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) by any dishonest concealment of material facts; or
- (c) by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is false, deceptive or misleading in a material particular;

induces or attempts to induce another person to enter into or to offer to enter into any contract of insurance with an insurer is guilty of an offence.

Penalties.

88. (1) A person or body guilty of an offence under section 12(5), 16(5), 22(2), 24(3)(a), 27, 34(5) or (6), 35(8), 37(5), 40(5) or (6), 49(2), 64(9)(a) or (b) or 87(2) shall be liable -

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

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

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

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(b) and (2)(b) shall be applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987^k and section 23 of the Reform (Sark) Law, 1951^l.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there shall be deemed to be a fresh offence on each day on which the display or exhibition continues.

Criminal proceedings against unincorporated bodies.

89. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is alleged to have been committed by an unincorporated body,

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

^l Ordres en Conseil Vol. XV, p. 215; section 23 was substituted by Vol. XXIII, p. 200 and amended by Vol. XXIX, p. 27 and Orders in Council No. VII of 1989 and No. XII of 1991.

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proceedings for the offence shall be brought in the name of that body and not in the name of any of its members and, for the purpose of such proceedings, the service of any document (including any summons) on that body shall be carried out in accordance with the provisions of section 95.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Law, or any Ordinance, regulation or rule made under it, shall be paid from the funds of that body.

(3) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

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

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

Criminal liability of directors, etc.

90. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a company and is proved to have been

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committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, general representative, chief executive, controller, manager, secretary or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

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

Jurisdiction.

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

Liability of States

Exclusion of liability.

93. No liability shall be incurred -

(a) by, or by any committee of, the States of Guernsey, the

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States of Alderney or the Chief Pleas of Sark;

- (b) by the Commission or Her Majesty's Greffier; or
- (c) by any member, officer or servant of any of the aforesaid;

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

Miscellaneous

Fees.

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

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

- (a) applications for, and the grant of, licences;
- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information

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or notification as required by or under section 1(5), 34, 37(1), 40 or 68;

- (c) the making of a request to the Commission -
 - (i) to recognise an organisation or society as an organisation representative of employers or employees for the purposes of section 5(b);
 - (ii) under section 19(1) for permission for the purposes of section 18, 23 or 24;
 - (iii) to approve a person under section 29(1)(a)(ii) to act as an insurer's general representative;
 - (iv) to modify any requirement of section 30 or 32;
 - (v) to approve any accounts or any actuarial report in abridged form for the purposes of section 39(2) or 41(1)(d);
 - (vi) to allow the surrender of a licence to be withdrawn;
 - (vii) to consent to the surrender of a licence;
- (d) an application for the consent of the Commission -

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- (i) under section 4, to the carrying on of insurance business in a country outside the Bailiwick;
 - (ii) under section 45, to a scheme for the transfer of long term business;
 - (iii) under paragraph 1(6) or 2(5) of Schedule 2, to take into account in calculating a margin of solvency reinsurance ceded to, or to regard as an approved asset an amount receivable or balance due from, a person with whom an insurer is associated;
 - (iv) under paragraph 2(4) of Schedule 2, to take into account for the purposes of that Schedule derivatives as approved assets;
 - (v) under paragraph 5 of Schedule 2, to take into account for the purposes of that Schedule assets and liabilities disclosed by group accounts;
- (e) such other matters as the States may by Ordinance prescribe for the purposes of this section.

(3) Regulations under this section may also prescribe fees to be payable to the Commission annually or periodically, specifying the dates, times,

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intervals or occasions at which or on which payment is to be made.

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

(a) shall be recoverable from -

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

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

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

as a civil debt due to the Commission;

(b) are not refundable;

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

Service of notices and documents.

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

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

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- (f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick;
- (g) a licensed insurer, by being given to or served on it, or by being given to or served on its general representative, in accordance with the preceding paragraphs of this subsection;

and in this section -

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post;
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication; in which event the document shall be regarded as served when it is received; and
- (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.

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

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

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

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

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

- (a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court

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of Alderney or, as the case may be, the Court of the Seneschal;

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

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

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

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting;

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

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

Verification of information.

96. The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement

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

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

Evidence.

97. (1) In any proceedings, a certificate signed on behalf of the Commission and certifying -

- (a) that a particular person or body is or is not a licensee or former licensee or was or was not a licensee at a particular time;
- (b) the date on which a particular person obtained or ceased to hold a licence;
- (c) the terms of any conditions imposed in respect of a particular person's licence;

shall be admissible in evidence.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

General interpretation.

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98. (1) In this Law any expression in respect of which there is an entry in Schedule 5 shall have, except where the context requires otherwise, the meaning given by that entry.

(2) Unless the context otherwise requires, references in this Law to the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by or under this Law on the said Policy and Finance Committee or (as the case may be) the said General Purposes and Finance Committee.

(3) Except where the context otherwise requires, any reference in this Law to an enactment includes a reference thereto as amended, re-enacted (with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

(5) The Interpretation (Guernsey) Law, 1948ⁿ shall apply to the interpretation of this Law throughout the Bailiwick.

Effect on other Laws relating to insurers.

99. The provisions of this Law are in addition to and, except where the context otherwise requires, not in derogation from any other requirement to which an insurer may be subject including, without limitation, any provision of or under -

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- (a) the Companies (Guernsey) Law, 1994 and the Companies (Enabling Provisions) (Guernsey) Law, 1996^o;
- (b) the Companies (Alderney) Law, 1994;
- (c) the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Laws, 1936 to 1983^p;
- (d) the Road Traffic (Compulsory Third-Party Insurance) (Alderney) Law, 1950^q;
- (e) the Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969^r;
- (f) the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972^s;

ⁿ Ordres en Conseil Vol. XIII, p. 355.

^o Order in Council No. XII of 1996.

^p Ordres en Conseil Vol. X, p. 388; Vol. XV, p. 43; Vol. XVIII, pp. 35 and 257; Vol. XX, p. 247; Vol. XXIII, p. 227; Vol. XXIV p. 250; Vol. XXVII, p. 76; Vol. XXVIII, p. 303.

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

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

^s Ordres en Conseil Vol. XXIII, p. 515.

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- (g) the regulatory Laws;
- (h) the Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996^t;
- (i) the Steam Boilers (Insurance) Ordinance, 1952^u;
- (j) any other enactment in force in the Bailiwick or any part thereof requiring there to be in force any policy of insurance.

Repeals and amendments.

100. (1) The enactments mentioned in the first column of Part I of Schedule 6 are repealed to the extent specified in the second column of that Schedule.

(2) The enactments mentioned in the first column of Part II of Schedule 6 shall have effect subject to the amendments specified in the second column of that Schedule.

Provision as to publication of notices in Alderney and Sark and on Commission's website.

101. (1) If, pursuant to any requirement imposed by or under this Law,

^t Order in Council No. XIII of 1996.

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

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any document or information is published in La Gazette Officielle -

- (a) a copy of the document or information shall be published in the Alderney Official Gazette; and
- (b) a copy of the document or information shall be sent or delivered to the Seneschal of Sark who shall forthwith cause a copy of the document or information to be inserted in the Sark notice box.

(2) Any requirement imposed on the Commission by or under this Law to publish any document or information in La Gazette Officielle shall be construed as including a requirement to publish that document or information on the Commission's official web site.

Savings provisions.

102. (1) Any subordinate legislation made or other thing done under an enactment repealed and re-enacted (with or without modification) by this Law, or having effect as if so made or done, which could have been made or done under this Law shall have effect, after the date of commencement of this Law, as if made or done under the provision re-enacted.

(2) Any reference in any enactment, statutory instrument or rule of court (however expressed) to -

- (a) a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986; or

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- (b) registered or registration (or any related expression) under and within the meaning of that Law;

shall be construed after the date of commencement of this Law as a reference to (as the case may require) -

- (i) a licensed insurer; or
- (ii) licensed or licence (or the equivalent related expression);

within the meaning of this Law.

(3) A person who immediately before the commencement of this Law was a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986 shall on the commencement of this Law be deemed to be a licensed insurer under and within the meaning of this Law, the provisions of which shall apply accordingly; and any conditions subject to which he was registered under the said Law of 1986 shall apply in respect of the licence under this Law which he is deemed to hold by virtue of this subsection.

(4) An insurer who at any time before the commencement of this Law carried on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986 but who may not carry on insurance business in such circumstances as not to require licensing by virtue of section 5 of this Law shall be deemed to be a former licensee under and

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within the meaning of this Law, the provisions of which shall apply accordingly.

(5) A person who before the commencement of this Law was at any time but had ceased to be a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986 shall be deemed to be a former licensee under and within the meaning of this Law, the provisions of which shall apply accordingly.

(6) Any reference, howsoever expressed, in any enactment, statutory instrument or rule of court to an enactment repealed and re-enacted (with or without modification) by this Law shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

Citation.

103. This Law may be cited as the Insurance Business (Bailiwick of Guernsey) Law, 2002.

Commencement.

104. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions of this Law or for different purposes.

SCHEDULE 1

Section 2

DESCRIPTIONS OF LONG TERM BUSINESS

Life and annuity

1. Effecting or carrying out contracts of insurance on human life or contracts to pay annuities on human life.

Marriage and birth

2. Effecting or carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

Linked long term

3. Effecting or carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to -
 - (a) the value of, or the income from, property of any description (whether or not specified in the contracts); or
 - (b) fluctuations in, or an index of, the value of property of any description (whether or not so specified).

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Permanent health

4. Effecting or carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that -
 - (a) are expressed to be in effect for a period of not less than five years or until normal retirement age for the policyholder concerned, or without limit of time, and
 - (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Capital redemption

5. Effecting or carrying out capital redemption contracts.

Pension fund management

6. Effecting or carrying out -
 - (a) contracts to manage the investments of pension funds; or
 - (b) contracts of the description mentioned in subparagraph (a) that are combined with contracts of insurance

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covering conservation of capital or payment of a minimum interest.

Credit life assurance

7. Effecting or carrying out credit life assurance contracts the term of which is expressed to be for a period of not less than 5 years or which are without limit of time.

SCHEDULE 2

Sections 30 and 51

MARGIN OF SOLVENCY,
ASSETS AND LIABILITIES

Margin of solvency.

1. (1) The margin of solvency for the purposes of this Law in the case of a licensed insurer carrying on general business is an amount of not less than the higher of -

(a) the sum of -

(i) 18% of that insurer's first £5,000,000 of net premium income in respect of general business; and

(ii) 16% of the amount by which that insurer's net premium income in respect of general business exceeds £5,000,000; or

(b) 5% of the value of the loss reserves (which shall be construed in accordance with subparagraph (9)).

(2) The Commission may at any time by notice in writing served on an insurer, a class of insurers or insurers generally, modify the percentages specified in subparagraph (1) to be used for current and/or future computations of the margin of solvency; and for the purposes of this subparagraph, in modifying the said percentage,

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the Commission shall consider -

- (a) the nature and classes of business involved;
- (b) the spread of risk and the historic and industry based claims data;
- (c) the size, complexity of business and business risks of the insurer; and
- (d) any other information which is available to the Commission and which it considers relevant to evaluating the reserve requirement set out in subparagraph (1)(b).

(3) The margin of solvency for the purposes of this Law in the case of a licensed insurer carrying on long term business is an amount of not less than the greater of -

- (a) £250,000; or
- (b) $2\frac{1}{2}$ % of so much of the value of the fund required to be maintained by that insurer under section 42(1) as does not comprise such a separate part of that fund as is mentioned in section 42(2);

provided that in the case of a person who, immediately before the date of

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commencement of this Law, was a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, the requirements of this subparagraph shall, until the expiration of a period of 12 months beginning on that date, be deemed to have been complied if that person complies with the margin of solvency requirements imposed by the said Law of 1986.

(4) For the purposes of this paragraph an insurer's net premium income in respect of general business shall be taken to be -

(a) during the financial year in which the insurer first carries on general business in or from within the Bailiwick, the amount stated in the insurer's application for a licence in respect of that business as the maximum gross premium income which the insurer anticipates earning in respect of general business during that financial year less any premium taxes and reduced by -

(i) the amount stated in that application as the total estimated amount of rebates, refunds and reinsurance commissions which will, on the basis of that anticipated maximum gross premium income, be accrued by the insurer; and

(ii) subject to subparagraph (6), the gross amount of any reinsurance premiums (after deduction of any rebates or commissions receivable by the insurer) which will, on that basis, be ceded by the insurer

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in respect of general business during that financial year;

(b) at any other time, subject to paragraph 6, the value of the gross premium income earned in respect of general business during the insurer's last preceding financial year reduced by -

(i) the amount of any premium taxes, rebates, refunds and reinsurance commissions accrued by the insurer; and

(ii) subject to subparagraph (6), the gross amount of any reinsurance premiums (after deduction of any rebates or commissions receivable by the insurer) ceded by the insurer in respect of general business during that preceding financial year:

PROVIDED THAT if a licensed insurer's first or preceding financial year, as the case may be, is not a period of 12 calendar months, that insurer's net premium income in respect of general business shall be taken to be an amount calculated in accordance with this subparagraph divided by the number of days in that first or preceding financial year, as the case may be, and the resultant figure multiplied by 365.

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(5) For the purposes of subparagraphs (4)(a) and (b) any funds received for the assumption, by a licensed insurer, of insurance obligations under a novation, portfolio transfer or other scheme or arrangement shall be included in the gross premium income computation unless the novation, transfer or other scheme or arrangement is supported by an actuarial certificate acceptable to the Commission; and in the event that the funds received in respect of the assumption of insurance obligations were not determined on an arms length basis, the amount to be included in the gross premium income computation shall be the market value for such an assumption determined on a basis acceptable to the Commission.

(6) Reinsurance ceded by a licensed insurer to an associated party shall not be taken into account for the purposes of this paragraph unless -

- (a) it is so ceded to a licensed insurer; or
- (b) the Commission, in any particular case, consents in writing to its being so taken into account.

(7) In determining whether a licensed insurer maintains its margin of solvency at all times as required by section 30, the insurer must use the projected gross premium income included in the current business plan (including all amendments) where that is 10% or more higher than so much of the value as is mentioned in subparagraph (4)(b).

(8) The margin of solvency computation shall be submitted to the Commission by a licensed insurer in such form and manner and at such times as the Commission may from time to time specify.

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(9) For the purpose of this Schedule an insurers' loss reserves shall be the value of the sum of -

(a) reported outstanding losses; and

(b) provision for losses incurred but not reported;

less reinsurance recoverables.

Approved assets.

2. (1) For the purposes of this Law, approved assets will be those assets that the Commission may for time to time approve by regulation.

(2) Of the value of the assets which a licensed insurer carrying on general business must at any time have in order to maintain the minimum margin of solvency which that insurer is required by this Law to maintain in respect of general business, at least 75 % shall be approved assets.

(3) Of the value of the assets which a licensed insurer carrying on long term business must at any time have in order to maintain the minimum margin of solvency which that insurer is required by this Law to maintain in respect of long term business, at least 25 % shall be approved assets.

(4) Derivative contracts, or schemes resulting in an equivalent arrangement, in whatever form they take, are not approved assets unless in any particular case the Commission consents in writing to them being regarded as such.

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(5) An amount receivable or balance due from a person with whom an insurer is an associated party is not an approved asset of that insurer unless in any particular case the Commission consents in writing to it being regarded as such

(6) Any asset under lien securing any derivative contract or other such encumbrance (except to the extent that it is securing an obligation of the licensed insurer under an insurance contract) is not an approved asset of that insurer unless in any particular case the Commission consents in writing to its being regarded as such.

Valuation of assets and liabilities.

3. (1) The Commission may by regulation determine the method or basis to be used for the determination of the value of assets and liabilities or any class thereof for the purposes of calculating the margin of solvency and the approved assets required to be maintained under this Law.

(2) Subject to subparagraph (3), the value of an asset or class of assets for the purposes of this Law shall be -

- (a) the value (positive or negative), determined pursuant to regulations of the Commission under subparagraph (1), of that asset or class of assets; or
- (b) if no such regulations have been made, the lower of -
 - (i) current market value; and

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- (ii) the value calculated in accordance with Recognised Accounting Standards.

(3) The value of any assets of the fund required to be maintained by a licensed insurer under section 42(1) which are matched by long term liabilities in respect of maturity dates and which fall within any of the descriptions of assets which are approved assets under paragraph 2 may be taken to be their maturity value if that value is assigned to them in the accounts last deposited under section 37 and considered appropriate by the auditor who audited those accounts under section 36.

4. (1) Subject to subparagraphs (2) and (3), the value of a liability or class of liabilities for the purposes of this Law shall be -

- (a) the value (positive or negative), determined pursuant to regulations of the Commission under paragraph 3(1), of that liability or class of liabilities; or
- (b) if no such regulations have been made, the value calculated in accordance with Recognised Accounting Standards.

(2) The liabilities of any long term business carried on by an insurer shall be taken to be whichever is the greater of -

- (a) the amount which, in respect of that business, for the time being stands to the credit of the fund maintained by the insurer under section 42(1); or

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- (b) the amount of those liabilities last ascertained by an investigation under section 41.

(3) Where an insurer is no longer underwriting or has ceased to underwrite a class of business representing 25% or more of its technical reserves, the value of its technical reserves shall include a provision for the estimated expenses to extinguish those technical reserves.

5. If in any particular case the Commission so consents in writing, the assets and liabilities of an insurer to be taken into account for the purposes of this Schedule may be taken to include all those assets and liabilities disclosed by group accounts dealing with the state of affairs and the profit or loss of the insurer and any subsidiary of the insurer which is a Guernsey company or an Alderney company not engaged in trading otherwise than by dealing in investments.

6. Associated party balances receivable by an insurer may be used to offset associated party balances payable by an insurer in computing the insurer's margin of solvency subject to a maximum of the amount payable so long as there is a written legal right of set-off in place.

Power to amend Schedule.

7. The Commission may by regulation amend any of the provisions of this Schedule.

SCHEDULE 3

Section 36

REQUIREMENTS AS TO AUDIT OF ACCOUNTS
AND AUDITOR'S REPORT

General duty of auditor.

1. An auditor acting pursuant to section 36 shall carry out sufficient investigation to enable him to form an opinion as to the matters on which his opinion is required by paragraph 2 of this Schedule to be expressed in his report.

Auditor's report.

2. The report of an auditor made pursuant to section 36 shall -

- (a) state whether, in the auditor's opinion, the accounts -
 - (i) have been properly prepared in accordance with Recognised Accounting Standards;
 - (ii) give a true and fair view of the licensed insurer's state of affairs at the balance sheet date and of its profit or loss for the financial period ending on that date; and
 - (iii) are in accordance with the provisions of this Law;
- (b) make specific reference to any transaction, other than a

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

- (c) declare any respect in which, in the auditor's opinion, the information given in an annual return of the insurer prepared pursuant to section 33 is inconsistent with the accounts of the insurer for the financial year to which that annual return relates.

Statement in connection with abridged accounts.

3. If in any case the Commission approves accounts in an abridged form for the purposes of section 39 the auditor's report in relation to those abridged accounts shall include a statement that they are in the form approved by the Commission.

SCHEDULE 4

Section 65

INFORMATION IN INVITATIONS RELATIVE TO
UNLICENSED INSURERS

Manner in which information is to be provided.

1. The information required under section 65(2) shall be provided in accordance with the following provisions of this paragraph -

- (a) if the invitation is issued in writing and is sent or delivered, by sending or, as the case may be, by delivering with the invitation a written statement containing that information;
- (b) if the invitation is issued orally, by supplying that information orally to the person to whom the invitation is issued and -
 - (i) if that person is present when the invitation is issued, by delivering to him immediately thereafter a written statement containing that information;
 - (ii) if that person is not so present, by sending by post or causing to be delivered to him as soon as reasonably practicable, at the address supplied by him for the purpose or at his last known address,

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a written statement containing that information.

Cases to which section 65 does not apply.

2. Section 65 does not apply to any case in which the invitation is -
 - (a) an invitation for the renewal or amendment of the terms of a contract of insurance effected as a result of an invitation issued in accordance with section 65 where there has been no significant change in the circumstances relevant to the information provided when the contract was first effected;
 - (b) an amendment of an invitation issued in accordance with section 65 where there has been no significant change in the circumstances relevant to the information provided when the invitation was first issued.

SCHEDULE 5

Section 98(1)

GLOSSARY OF EXPRESSIONS

In this Law, unless the context requires otherwise -

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

"**actuary**" means a fellow of the Institute of Actuaries in England and Wales or the Faculty of Actuaries in Scotland or any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for insurers licensed to carry on long term business in or from within the Bailiwick;

"**administrative or secretarial services**" includes general accountancy and bookkeeping services, but not -

- (a) the audit of accounts; or
- (b) any services provided by an employee of the insurer concerned under his contract of employment;

"**advertisement**" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other

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documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media;

"advocate" means an Advocate of the Royal Court of Guernsey;

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

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

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

"approved assets" shall be construed in accordance with paragraph 2 of Schedule 2;

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

- (a) the spouse, child or stepchild of that person;
- (b) any person who is an employee of, or who is in partnership with, that person;

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

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

- (a) any person who is in partnership with that person;
- (b) any company of which that person is a controller;
- (c) any body of which that person is a director;

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- (d) where that person is a company -
 - (i) a holding company, subsidiary or related company of that person;
 - (ii) a subsidiary or related company of a holding company of that person;
 - (iii) a holding company of a subsidiary of that person;
or
 - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting;

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

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

"auditor" means a person who is qualified for appointment as an auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in

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conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994 and who is approved by the Commission to audit the accounts of licensed insurers;

“auditors' management letter” means a letter issued by the auditor of a licensed insurer to the directors or management of the licensee identifying weaknesses in the accounting and internal control systems and other matters including errors identified during the audit;

"Bailiff" has the meaning given by section 71(4);

“Bailiwick” means the Bailiwick of Guernsey;

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

"body" means a company or an unincorporated body;

"business plan" means a plan which includes a financial projection of the insurer's operations and which is in such form and contains such information as may be determined by the Commission;

"capital base", in relation to a licensee, means the capital base determined by the Commission after consultation with the licensee; and any such determination may be varied from time to time;

"capital redemption contract" means a contract effected by an insurer

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(the effecting or carrying out of which does not otherwise constitute insurance business) whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the insured in the future;

"chief executive", in relation to a body, 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 body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick;

"Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

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

"company" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world, and includes a Guernsey company and an Alderney company;

"contract of employment" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral;

"contract of insurance" includes any contract the effecting or carrying

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out of which constitutes the carrying on of insurance business;

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly;

"controller", in relation to a company, means -

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary;
- (b) a shareholder controller or an indirect controller;

"country" includes any territory or other place;

"Court", in sections 14, 28, 63, 75, 76, 77 and 95, has the meanings respectively given in sections 14(6), 28(10), 63(10), 75(6), 76(5), 77(3) and 95(6);

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961^v;

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

"Current Personal Questionnaire" means a questionnaire, in a form

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to be determined from time to time by the Commission -

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

(b) which does not omit information which -

(i) the insurer; or

(ii) the person in respect of whom the questionnaire is required to be lodged;

knows or has reasonable grounds to suspect is, or might reasonably be thought to be, material to the assessment (pursuant to the provisions of Schedule 7) of the latter's suitability to be a person of a description set out in section 11(3);

“derivative” means a financial instrument that derives its value from the price or rate of some underlying item; and "underlying items" include, but are not limited to, equities, bonds, commodities, interest rates, exchange rates and stock market and other indices;

"director" includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes -

(a) the chief executive or any member of the committee or

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other similar governing body; and

- (b) any person in accordance with whose directions or instructions any director is accustomed to act;

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

- (a) in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form;
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language;

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

- (a) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person who has his ordinary place of residence in the Bailiwick at the time the contract is effected against any kind of risks except risks in relation to property; or

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(b) by way of effecting or carrying out a contract of insurance whose principal object is to insure a person against risks of any kind in relation to -

(i) real property situated in the Bailiwick;

(ii) personal property which at the time the contract is effected is held or based in the Bailiwick or which is deemed in accordance with regulations made by the Commission under this paragraph to be so held or based; or

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

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

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

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

"financial instruments" include, but are not limited to, futures,

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options, forward contracts, interest rate and currency swaps, interest rate caps, collars and floors, forward interest rate agreements, commitments to purchase shares or bonds, note issuance facilities and letters of credit, and any similar instrument by whatever name called;

"financial year" means the period covered by the licensee's accounts in respect of its business, being the accounts required to be deposited with the Commission by section 37;

"former licensee" means a person who -

- (a) is not or is not deemed to be a licensee; but
- (b) has previously been a licensee;

and also includes any person described in section 102(4) or (5);

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

"general representative", in relation to a licensed insurer, means the insurer's general representative for the purposes of section 29;

"group", in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

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“Guernsey body” means a Guernsey company or an unincorporated body whose principal place of business is in Guernsey;

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

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

"holding company" has the meaning given in Schedule 8, subject to any regulations under paragraph 5 of that Schedule;

“incidental” means, for the purposes of section 7(2)(h), no more than 5% of the total premium income of the insurer in any financial year;

“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;

"inspector" means a person appointed by the Commission under section 69(1);

"insurance" includes assurance and reinsurance;

"insurance advertisement" means an advertisement inviting persons to enter into or to offer to enter into contracts of insurance; and an advertisement

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containing information which is intended or which might reasonably be presumed to be intended to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them so to do;

"insurance business" means the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or through an agent, and includes -

- (a) the effecting or carrying out, by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting or carrying out, by a person (not being a body carrying on a banking business) who carries on business which is insurance business apart from this paragraph, of-
 - (i) capital redemption contracts;
 - (ii) contracts to manage the investments of pension funds (other than funds solely for the benefit of

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

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

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

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

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

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

"insurers' code of conduct" means a code of conduct for licensed insurers issued by the Commission from time to time for the purposes of this Law;

"licence" means a licence granted under section 7;

"licensed insurance intermediary" means a person for the time being licensed as an insurance intermediary under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

"licensed insurance manager" means a person for the time being licensed as an insurance manager under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;

"licensed insurer" means an insurer for the time being licensed under section 7 and includes an insurer carrying on business in such circumstances as not to require licensing by virtue of section 5;

"licensee" means a licensed insurer;

"list", in section 17, means the list of licensed insurers required to be kept under that section;

"long term business" means, subject to section 2(3) and (4), insurance

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business of any of the descriptions set out in Schedule 1;

"long term policyholder" means a policyholder in respect of a policy the effecting of which by the insurer constituted the carrying on of long term business;

"manager", in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company -

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

"Minimum Capital Requirement" means the amount that the Commission may from time to time determine to be the Minimum Capital Requirement;

"modifications" includes exceptions, adaptations and additions;

"name", in sections 18 to 24, includes trading name;

"net premium income" shall be construed in accordance with paragraph 1 of Schedule 2;

"officer of police" means a member of the salaried police force of the

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Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^w 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 special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987^x;
- (c) in relation to Sark, the Constable and the Vingtenier;

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

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

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

^y Order in Council No. VIII of 1995.

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

"policy" -

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

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

- (a) in relation to long term business involving the granting of annuities upon human life, includes an annuitant; and
- (b) in relation to insurance business of any kind other than

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such as is mentioned in the foregoing paragraph or capital redemption contracts, includes a person to whom, under a policy, a sum is due or a periodic payment is payable;

"pool" means an arrangement which is created when a number of insurers agree that all insurances of a particular character shall be shared amongst them in specified proportions;

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Protected Cell Companies Ordinance, 1997;

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

"Recognised Accounting Standards" means accounting standards (which expression shall include any insurance industry recommended practice, by whatever name or description issued) which are for the time being approved by the Commission;

"recognised insurer" means the following -

- (a) any person who is licensed as an insurer under this Law in respect of the description of insurance business concerned;
- (b) any person who is entitled to carry on the description of

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insurance business concerned in or from within the Bailiwick without being licensed as an insurer under this Law by virtue of section 5;

- (c) any other insurer for the time being included (specifically or by description) in a list of recognised insurers maintained and published by the Commission;

"recovery plan" means a plan, in such form and containing such information as may be determined by the Commission and as may be necessary for the protection of the interests of the insurer's policyholders or for the protection of the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency);

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

"regulations" means regulations made by the Commission or, as the case may be, by the Committee under this Law;

"regulatory Laws" means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law,

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1987^z;

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^{aa};

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^{bb};

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

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

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to

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

^{aa} Order in Council No. XIII of 1994.

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

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vote in all circumstances at general meetings of that company;

(b) where -

(i) a company holds a qualifying capital interest in another company; and

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company;

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

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

"Relevant Professional Standards" for the purposes of section 41 means those professional standards from time to time approved by the Commission for the purposes of that section;

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"relevant supervisory authority", in relation to a country outside the Bailiwick, means an authority discharging in that place -

- (a) functions corresponding to any functions of the Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or under the regulatory Laws; or
- (b) such other functions as the Commission may by regulation prescribe;

"Reserve Asset Requirement" means the amount that the Commission may from time to time determine to be the Reserve Asset Requirement;

"Royal Court" means the Royal Court sitting as an Ordinary Court;

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

"shareholder controller" -

- (a) in relation to a company, and subject to paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary;

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- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company;

“shareholders' funds” means the value of the excess of an insurer's assets over its liabilities; and for the purposes of this definition the expression **“liabilities”** excludes share capital, retained reserves and loans from shareholders where they are subordinated, in writing, to the prior claims of all other creditors;

“significant shareholder”, in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power in general meeting of that company or of any other company of which that company is a subsidiary;

“States” means the States of Guernsey;

“subsidiary company” has the meaning given in Schedule 8, subject to any regulations under paragraph 5 of that Schedule, and **“subsidiary”** has the same meaning;

“syndicate” means a group of underwriters on whose behalf insurances are accepted, each underwriter taking a proportion of the insurances for himself without assuming liability for the insurances taken by the other members of the group;

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"**working day**" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^{cc}.

^{cc} Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

SCHEDULE 6

Section 100

REPEALS AND AMENDMENTS

PART I
REPEALS

1. ENACTMENT	2. EXTENT OF REPEAL
1. Insurance Business (Guernsey) Law, 1986 ^{dd} .	The whole Law.
2. Financial Services Commission (Bailiwick of Guernsey) Law, 1987 ^{ee} .	In schedule 2, paragraphs 18 to 24.
3. Banking Supervision (Bailiwick of Guernsey) Law, 1994 ^{ff} .	Section 59(2).
4. Insurance Business (Amendment) (Guernsey and Alderney) Law, 1997 ^{gg} .	The whole Law.

^{dd} Ordres en Conseil Vol. XXIX, p. 214.

^{ee} Ordres en Conseil Vol. XXX, p. 243.

^{ff} Order in Council No. XIII of 1994.

^{gg} Order in Council No. III of 1997.

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5. Insurance Business (Amendment) (Guernsey and Alderney) Law, 1998 ^{hh} .	The whole Law.
6. Insurance Business (Bailiwick of Guernsey) Law, 1999 ⁱⁱ .	The whole Law.
7. Insurance Business (Guernsey) Law, 1986 (Commencement) Ordinance, 1986 ^{jj} .	The whole Ordinance.
8. Insurance Business (Limitation of Liability) Ordinance, 1990 ^{kk} .	The whole Ordinance.
9. Insurance Business (Amendment) (Guernsey and Alderney) Law, 1998 (Commencement) Ordinance, 1998 ^{ll} .	The whole Ordinance.

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- ^{hh} Order in Council No. II of 1998.
- ⁱⁱ Order in Council No. XI of 1999.
- ^{jj} Recueil d'Ordonnances Tome XXIII, p. 488.
- ^{kk} Recueil d'Ordonnances Tome XXV, p. 143.
- ^{ll} Ordinance No. XIII of 1998.

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PART II
AMENDMENTS

1. ENACTMENT	2. AMENDMENT
1. Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936 ^{mm} .	For section 3(3)(b)(iv) substitute - "(iv) such assurance company is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the description set out in subsection (1) of this section, by virtue of section 5 of that Law;"
2. Surf-Riding (Longboards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969 ⁿⁿ .	In section 1(2) for the words beginning with "and a company shall not be so approved" to the end of the section substitute - "and a company shall not be so approved unless it is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the description set out in subsection (1) of this section, by virtue of section 5 of that Law".

^{mm} Ordres en Conseil Vol. X, p. 388; subparagraph (iv) was inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

ⁿⁿ Ordres en Conseil Vol. XXII, p. 2; the words substituted were inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

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<p>3. Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring charges and Removal of Boats) (Guernsey) Law, 1972^{oo}.</p>	<p>In section 1(5) for the words beginning with "and a company shall not be so approved" to the end of the section substitute -</p> <p>"and a company shall not be so approved unless it is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as an insurer in respect of domestic business or is exempt from section 3 of that Law, in relation to insurance of the descriptions set out in the preceding subsections of this section, by virtue of section 5 of that Law".</p>
<p>4. Income Tax (Guernsey) Law, 1975^{pp}.</p>	<p>In section 188 for the definition of "insurance company" substitute the following -</p> <p>"insurance company" means any insurer which is licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 in respect of long term business and any insurer which is exempt from the requirements of that Law to be licensed in respect of long term business by virtue of section 5 of that Law;"</p>

^{oo} Ordres en Conseil Vol. XXIII, p. 515; the words substituted were inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

^{pp} Ordres en Conseil Vol. XXV, p. 124; the definition substituted was inserted by Schedule 6 to the Insurance Business (Guernsey) Law, 1986.

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5. Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996 ^{qq} .	In section 4(1) for the words "Insurance Business (Guernsey) Law, 1986" substitute "Insurance Business (Bailiwick of Guernsey) Law, 2002".
6. Financial Guarantee Insurance (Peak International Limited) Ordinance, 1997 ^{rr} .	<p>(a) In section 9(7), the words following "any question of law" are repealed.</p> <p>(b) In section 27(1)(b), for the words "an authorised insurance manager within the meaning of the Insurance Business (Guernsey) Law, 1986" substitute "a licensed insurance manager within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002".</p> <p>(c) In section 29(2) in the definition of "insurance business", for the words "Insurance Business (Guernsey) Law, 1986" substitute "Insurance Business (Bailiwick of Guernsey) Law, 2002".</p>

^{qq} Order in Council No. XIII of 1996.

^{rr} Ordinance No. XV of 1997.

SCHEDULE 7

MINIMUM CRITERIA FOR LICENSING

Integrity and skill.

1. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on with prudence, professional skill and integrity appropriate to the nature and scale of his activities and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

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

Economic benefit.

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

Fit and proper persons.

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

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

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

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- (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^{ss};
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{tt};
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^{uu}; and
 - (iv) any other enactment prescribed for the purposes hereof by regulation of the Commission.

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

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

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

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

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- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence;
- (b) contravened any provision contained in or made under this Law, the regulatory Laws or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services; or
 - (ii) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre");
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business or

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his suitability to carry on business regulated by this Law;

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

Business to be directed by at least two individuals.

4. At least two individuals of appropriate standing and experience shall effectively direct the business of the applicant or licensee.

Position of board of directors.

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

- (a) which is a Guernsey company or an Alderney company;
and
- (b) which wishes to be licensed under section 7 or (as the case may be) which is licensed under section 7 as an insurer;

the directors shall include at least one director -

- (i) who is not an associate (other than a director) of, or associated party (other than a director) in relation to, the company; and

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- (ii) who is not responsible for the management of the company's business.

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

Business to be conducted in prudent manner.

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

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

- (a) of an amount commensurate with the nature and scale of his operations; and
- (b) of an amount and nature sufficient to safeguard the interests of his clients and policyholders, having regard to any factors appearing to the Commission to be relevant.

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

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- (a) the relationship between his liquid assets and his actual and contingent liabilities;
- (b) the times at which those liabilities will or may fall due and his assets will mature; and
- (c) any other factors appearing to the Commission to be relevant;

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

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

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

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

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

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

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

- (a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties;
- (b) the systems of control and record keeping of the applicant or licensee for business undertaken or

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contemplated and the provision made by him for the proper maintenance and development of such systems;

- (c) the complaints history of the applicant or licensee.

Power to make regulations.

7. The Committee may make regulations amending the provisions of this Schedule.

SCHEDULE 8

Section 98 & 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 -

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- (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;

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shall be treated as held or exercisable by that other;

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

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

5. The Committee may make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law.