

# ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

## The Protection of Investors (Bailiwick of Guernsey) Law, 1987

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(Registered on the Records of the Island of Guernsey  
on the 18th day of January, 1988.)

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1987

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**1987**

## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 18th day of January, 1988, before Sir Charles Frossard, Kt., Bailiff; present:—Donald Pescott Plummer, Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquire, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of December 1987 approving and ratifying a *Projet de Loi* entitled “The Protection of Investors (Bailiwick of Guernsey) Law, 1987”, 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, of which Order in Council the tenor followeth: —

# **At the Court at Buckingham Palace**

The 18th day of December 1987

PRESENT,

## **The Queen's Most Excellent Majesty in Council**

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 9th day of December 1987 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 30th day of July 1986, the States of Deliberation at a meeting held on the 24th day of June 1987 approved a Bill or “Projet de Loi” entitled “The Protection of Investors (Bailiwick of Guernsey) Law, 1987”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 2nd day of September 1987 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 30th day of September 1987 considered the said Bill or “Projet de Loi” when a Resolution was

passed agreeing to the application of the same to Sark. 4. That the said Bill or "Projet de Loi" is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Protection of Investors (Bailiwick of Guernsey) Law, 1987", and to order that the same shall have force of law, in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*G. I. de Deney.*



# PROJET DE LOI

## ENTITLED

### **The Protection of Investors (Bailiwick of Guernsey) Law, 1987**

#### ARRANGEMENT OF SECTIONS

##### *Section*

## PART I

### LICENSING OF INVESTMENT BUSINESS

#### *Controlled investment business*

1. Controlled investment business.
2. Power to vary controlled investment business.

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3. Application for licence.
4. Grant or refusal of licence.
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## PART II

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7. Restriction on activities in connection with collective investment schemes.
8. Authorisation of collective investment schemes.
9. Imposition of conditions on authorisations.
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*Section***PART III****CONDUCT OF CONTROLLED INVESTMENT  
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28. Winding up etc.

*Section*

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- 37. Power to exclude liability.

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# PROJET DE LOI

## ENTITLED

### **The Protection of Investors (Bailiwick of Guernsey) Law, 1987**

THE STATES, in pursuance of their Resolution of the 30th day of July 1986, 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

### LICENSING OF INVESTMENT BUSINESS

#### *Controlled investment business*

1. (1) Subject to the provisions of this Law, a person shall not carry on, or hold himself out as carrying on, any controlled investment business in or from within the Bailiwick, except under and in accordance with the terms of a licence.

Controlled  
investment  
business.

(2) Subject to the provisions of this Law, a Bailiwick body shall not carry on, or hold itself out as carrying on, any controlled investment business in or from within a country or territory outside the Bailiwick, unless—

- (a) it is licensed to carry on that business in the Bailiwick; and
- (b) that business would be lawfully carried on by that body if it were carried on by it in the Bailiwick.

(3) For the purposes of this Law—

- (a) a person carries on controlled investment business if, by way of business, he engages in a restricted activity in connection with a controlled investment;
- (b) an investment of any of the categories identified and described in Schedule 1 constitutes a "controlled investment"; and
- (c) any activity identified and described in Schedule 2 constitutes a "restricted activity" when carried on in connection with a controlled investment.

Power to  
vary  
controlled  
investment  
business.

2. (1) The States may by Ordinance amend Schedule 1 or Schedule 2 so as to—

- (a) include in or delete from Schedule 1 any identification and description of any category of controlled investment; or
- (b) include in or delete from Schedule 2 any identification and description of any activity constituting a restricted activity; or
- (c) vary the description of any category of controlled investment identified in Schedule 1; or
- (d) vary the description of any restricted activity identified in Schedule 2.

(2) The States may by Ordinance provide that all of the activities identified in Schedule 2, or only such of those activities as are specified in the Ordinance, constitute restricted activities when carried on in connection with any specified category of controlled investment identified and described in Schedule 1 or in connection with any specified description of controlled investment within any such category.

*Licences*

3. (1) An application for a licence to carry on controlled investment business shall— Application  
for licence.

- (a) be made to the Committee in such form and manner as, subject to any rules made under section 14, the Committee may require; and
- (b) describe the restricted activity proposed to be carried on; and
- (c) identify the category of controlled investment in connection with which the restricted activity is proposed to be carried on; and
- (d) if the applicant proposes to carry on controlled investment business in, or from within, Alderney or Sark, contain a statement identifying the Island in which, or from within which, he intends to carry on that business; and
- (e) contain an address for the service on the applicant of any document required or authorised to be served on him under this Law, which address—
  - (i) if the applicant proposes to carry on business exclusively in, or from within, Alderney or Sark, shall be an address in Alderney or Sark, as the case may be; or
  - (ii) in any other case, shall be an address in Guernsey; and
- (f) contain or be accompanied by such other particulars, verified in such manner, as the Committee may require; and

(g) be accompanied by such fee as may be prescribed.

(2) An applicant for a licence shall furnish the Committee with such further information about the controlled investment business to which the application relates (being, if the Committee so requires, information verified in a specified manner) as the Committee may require for the purpose of determining the application.

Grant or  
refusal of  
licence.

4. (1) On an application for a licence being made to it under and in accordance with section 3 the Committee may—

- (a) subject to subsections (2) and (3) of this section, grant the application and issue a licence to the applicant; or
- (b) subject to section 35, refuse to grant the application and serve on the applicant notice in writing of its decision.

(2) The Committee shall not decide whether or not to grant an application for a licence in which the applicant has stated that he proposes to carry on controlled investment business in, or from within, Alderney or Sark without first giving notice that the application has been made—

- (a) as respects Alderney, to the Finance Committee of the States of Alderney;
- (b) as respects Sark, to the Greffier of Sark.

(3) In considering whether to grant an application made under section 3 the Committee shall have regard to the need to protect the public and the reputation of the Bailiwick as a financial centre; and to that end the Committee shall consider—

- (a) the general nature and specific attributes of the controlled investment business to which the application relates; and
  - (b) whether or not the applicant is a fit and proper person to carry on that business; and
  - (c) the manner in which it is proposed to organise the carrying on of the controlled investment business to which the application relates, the number of persons who will be responsible for carrying on each aspect of that business and the relationship between those persons; and
  - (d) what, if any, economic benefit the Bailiwick is likely to derive from the carrying on of that business; and
  - (e) if the applicant has stated that he proposes to carry on controlled investment business in, or from within, Alderney or Sark, any opinion expressed, in response to a notice given under subsection (2), by the Finance Committee of the States of Alderney or by the Greffier of Sark as the case may be; and
  - (f) any other factors which the Committee thinks it appropriate to consider.
- (4) A licence issued under this section shall state—
- (a) the name of the licensee; and
  - (b) the restricted activity and category of controlled investment to which the licence relates; and

- (c) if the licence authorises the applicant to carry on investment business in, or from within, Alderney or Sark, that fact; and
- (d) such other matters as may be specified in any rules made under section 14(2)(b).

Imposition  
of condi-  
tions on  
licences.

5. (1) Subject to section 35, the Committee may at any time on or after issuing a licence under section 4, by notice in writing served on the licensee, impose such conditions as appear to the Committee to be necessary or desirable, and may, by notice in writing served on the licensee, vary or revoke any condition so imposed.

(2) Without prejudice to the generality of subsection (1), a condition imposed under this section may—

- (a) prohibit a licensee from—
  - (i) entering into transactions of any specified description or in specified circumstances or to a specified extent;
  - (ii) soliciting business in a specified place, or from persons of a specified description, or otherwise than from such persons;
  - (iii) carrying on business in a specified manner or otherwise than in a specified manner;
  - (iv) carrying on business in or from within, or otherwise than in or from within, a specified Island in the Bailiwick;

- (v) disposing of, or otherwise dealing with, any, or any specified, assets, in any specified manner or otherwise than in a specified manner;
- (b) require a licensee to take all necessary steps to transfer to a trustee or custodian approved by the Committee all assets, or all assets of any specified description, which—
  - (i) belong to the licensee; or
  - (ii) are held by or to the order of the licensee and either belong to investors or belong to an open-ended investment company the shares in which belong to investors;
- (c) require a licensee to maintain in the Bailiwick assets of such value and of such description as appear to the Committee to be desirable with a view to ensuring that the licensee will be able to meet his liabilities in respect of the business carried on by him.

6. Subject to section 35, the Committee may, if it thinks fit, by notice in writing served on the licensee, cancel a licence or suspend a licence for a specified period, until the occurrence of a specified event or until specified conditions are complied with—

Cancellation  
or suspension  
of licence.

- (a) at the request of the licensee;
- (b) if the licensee has contravened a provision of this Law or has failed to satisfy an obligation to which he is subject by virtue of this Law;
- (c) if the licensee has failed to comply with a condition of the licence;



- (d) if the licensee has furnished misleading or inaccurate information to the Committee under or for the purposes of any provision of this Law;
- (e) if the licensee has not commenced to carry on in the Bailiwick the business to which the licence relates within one year of its issue;
- (f) if the licensee has ceased to carry on in the Bailiwick the business to which the licence relates;
- (g) if the Committee considers it desirable to cancel or suspend the licence for the protection of the public or of the reputation of the Bailiwick as a financial centre;
- (h) on any other ground which the States may by Ordinance specify as a ground for the cancellation or suspension of a licence.

## PART II

### AUTHORISATION OF COLLECTIVE INVESTMENT SCHEMES

Restriction  
on activities  
in connection  
with  
collective  
investment  
schemes.

7. Subject to section 29, a licensee shall not engage by way of business in any restricted activity in connection with a collective investment scheme unless—

- (a) the scheme is an authorised collective investment scheme of a specified class; and
- (b) he carries on that activity in accordance with—

- (i) any conditions imposed under section 9 in respect of that scheme; and
- (ii) any rules and regulations applicable to an authorised collective investment scheme of that class.

8. (1) A collective investment scheme may be declared by the Committee to be an authorised collective investment scheme of a specified class. Authorisation of collective investment schemes.

(2) A person seeking a declaration that a scheme is an authorised collective investment scheme shall—

- (a) make application to the Committee in such form and manner as, subject to any rules made under section 14, the Committee may require, containing or accompanied by such particulars, verified in such manner, as, subject to any such rules, the Committee may require, and accompanied by such fee as may be prescribed; and
- (b) pending determination of the application, furnish the Committee with such further information about the scheme concerned, verified in such manner as, subject to any such rules, the Committee may require.

(3) On an application being made to it under and in accordance with this section the Committee may—

- (a) if it appears to the Committee that the scheme satisfies the requirements referred to in subsection (4) of this section, grant the application and issue an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class; or

- (b) subject to section 35, refuse to grant the application and serve on the applicant notice in writing of its decision.

(4) The requirements for an authorised collective investment scheme are set out in Schedule 3; and the States may by Ordinance delete, add to or vary any provision of Schedule 3.

(5) An authorisation under this section shall state—

- (a) the name of the authorised collective investment scheme;
- (b) the name of the designated manager of the scheme for the purposes of this Law;
- (c) the name of the designated trustee or designated custodian of the assets of the scheme for the purposes of this Law;
- (d) the specified class of authorised collective investment scheme which the scheme is declared to be.

Imposition of  
conditions  
on authorisa-  
tions.

9. (1) Subject to section 35, the Committee may at any time on or after issuing an authorisation under section 8, by notice in writing served on the designated manager of an authorised collective investment scheme, impose such conditions as appear to the Committee to be necessary or desirable, and may, by notice in writing served on the designated manager of such a scheme, vary or revoke any condition so imposed.

(2) Without prejudice to the generality of subsection (1), a condition imposed under this section in relation to an authorised collective investment scheme may prohibit or restrict the promotion of the scheme—

- (a) to the public in the Bailiwick; or
- (b) from within the Bailiwick to the public in any specified country or territory, or elsewhere than in any specified country or territory.

10. Any provision of an authorised collective investment scheme which would have the effect of exempting any person carrying on a restricted activity in relation to the scheme from liability for failure to exercise due care and diligence in discharge of his functions in respect of the scheme, is void to that extent.

Avoidance of exclusion clauses.

11. Subject to section 35, the Committee may, if it thinks fit, by notice in writing served on the designated manager of an authorised collective investment scheme, revoke an authorisation issued under section 8 or suspend such an authorisation for a specified period, until the occurrence of a specified event or until specified conditions are complied with—

Revocation or suspension of authorisation.

- (a) at the request of the designated manager, trustee or custodian of the scheme;
- (b) if it appears to the Committee that the scheme no longer fulfils the requirements set out in Schedule 3;
- (c) if the designated manager, trustee or custodian of the scheme has contravened a provision of this Law or has failed to satisfy an obligation to which he is subject by virtue of this Law;
- (d) if the Committee considers it desirable to revoke or suspend the authorisation for the protection of the public or of the reputation of the Bailiwick as a financial centre;

- (e) on any other ground which the States may by Ordinance specify as a ground for the revocation or suspension of such an authorisation.

### PART III

## CONDUCT OF CONTROLLED INVESTMENT BUSINESS

### *Investment business rules*

Rules under  
Part III.

12. (1) The Committee may make rules in relation to the carrying on of controlled investment business by licensees and in relation to authorised collective investment schemes.

(2) Without prejudice to the generality of subsection (1), rules may make provision in respect of any of the matters referred to in sections 14 to 20 inclusive.

(3) Rules may—

- (a) apply to all controlled investments or to any category or description of controlled investments, or to all restricted activities or to any description of restricted activities;
- (b) set out general conditions applicable to all licences, to specified classes of licences, to licences issued to specified classes of persons, to licences issued in respect of specified restricted activities or to licences issued for the carrying on of restricted activities in connection with specified categories or descriptions of controlled investments;
- (c) make different provision in respect of the different cases mentioned in paragraphs (a)

and (b) of this subsection, in respect of different circumstances within those cases and in respect of different circumstances generally;

- (d) exempt from compliance with the rules, either unconditionally or subject to specified conditions, such classes or descriptions of restricted activities, controlled investments or licensees as may be specified, in such circumstances as may be specified;
- (e) contain transitional, incidental and supplementary provisions;
- (f) be varied or revoked by subsequent rules.

13. (1) Before making any rules under this Part of this Law the Committee shall, unless it considers that the delay involved would be prejudicial to the interests of investors, publish proposals for the rules in such manner as the Committee considers best calculated to bring them to the attention of persons likely to be affected by the rules, and shall have regard to any representations made to the Committee concerning those proposals.

Making,  
publication  
and proof  
of rules.

(2) Rules under this Part of this Law shall be made by an instrument in writing which shall—

- (a) specify the provisions of this Law under which the rules are made;
- (b) be made available to the public in such manner, and on such terms as to payment or otherwise, as the Committee considers appropriate;

and a person shall not be taken to have contravened any such rule in respect of which he shows that at the time of the alleged contravention paragraph (b) of this subsection had not been complied with.

(3) A person wishing to cite a rule in any legal proceedings may require the Committee to cause a copy of the instrument containing it to be endorsed with a certificate, signed by an officer of the Committee duly authorised in that behalf, stating—

- (a) that the instrument was made by the Committee; and
- (b) that the copy is a true copy of the instrument; and
- (c) the date on which the instrument was made available to the public as required by subsection (2)(b);

and the production of a copy of an instrument appearing to have been endorsed with such a certificate shall be prima facie evidence of the facts stated therein.

Licensing  
and author-  
isation rules.

14. (1) Rules may make any provision not inconsistent with this Law governing applications for, and the issue and validity of, licences and authorisations.

(2) Without prejudice to the generality of subsection (1), rules may—

- (a) prescribe the information to be furnished by an applicant for a licence or authorisation, and the manner in which that information is to be verified;
- (b) prescribe the form and content of licences and authorisations;
- (c) make provision as to the renewal of licences and authorisations the period of validity of which is limited by virtue of any regulations made under section 23;

- (d) prescribe minimum requirements (as to capital, solvency, management, staff, resources and otherwise) to be attained by an applicant for a licence or authorisation;
- (e) make provision as to the maintenance and publication of lists of licensees and of authorised collective investment schemes, and prescribe the details to be recorded in any such list.

15 (1) Rules may make provision as to the financial conduct of controlled investment business. Accounting and financial rules.

(2) Without prejudice to the generality of subsection (1), rules may make provision as to—

- (a) the manner in which money paid to a licensee in specified circumstances is to be held, dealt with and accounted for by the licensee;
- (b) the preparation, maintenance, submission to the Committee and publication of accounts, reports and other records;
- (c) the separation of funds attributable to different categories of controlled investments and to different descriptions of investments within each category, the maintenance of accounts and records in relation to those funds and the manner in which they are to be dealt with;
- (d) the appointment, removal, powers and duties of an auditor to audit accounts relating to controlled investment business and the manner in which those accounts are to be audited.



Conduct of  
business  
rules.

16. (1) Rules may impose requirements as to the conduct of controlled investment business and generally as to the manner in which licensees may carry on, or hold themselves out as carrying on, restricted activities.

(2) Without prejudice to the generality of subsection (1), rules may—

- (a) prohibit a licensee from carrying on, or holding himself out as carrying on, a restricted activity—
  - (i) in connection with a controlled investment of any specified category or description; or
  - (ii) in connection with a controlled investment of a category or description, or on a scale, or in a manner, other than that specified in a notice served on him by the Committee; or
  - (iii) in relation to persons of a specified description or persons other than those of a specified description;
- (b) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by a licensee of any discretionary powers afforded to him by an investor;
- (c) require a licensee to employ persons of specified descriptions, and to have at his disposal specified resources, in connection with the carrying on of any restricted activity, and specify the powers and duties of persons so employed;
- (d) control the relationship between licensees and their servants and agents and, without prejudice to the generality of the foregoing,—

- (i) require licensees to impose and enforce restrictions on the activities carried on by their servants and agents;
  - (ii) enable or require information obtained in the course of carrying on any description of the controlled investment business of a licensee to be withheld from persons involved in carrying on any other description of the controlled investment business of that licensee;
- (e) regulate or prohibit the carrying on of any other business in conjunction with any description of controlled investment business;
- (f) require specified information to be given, in the form and manner and at the time specified,—
- (i) to the Committee; or
  - (ii) to the public; or
  - (iii) to any prescribed classes or descriptions of persons; or
  - (iv) without prejudice to any regulations made under section 26(b), to any person whom a licensee invites to take any step with a view to acquiring a controlled investment; or
  - (v) to any person whom a licensee advises as to the exercise of any right conferred by a controlled investment;
- (g) without prejudice to any rules made under section 19, require a licensee to make provision for the protection of investors in the event of the cessation of any controlled investment business carried on by him;

- (h) impose requirements as to the places and manner in which, and the times during which, licences are to be displayed or available for inspection by the public;
- (i) make provision as to the settlement of disputes.

Power to  
adapt rules  
under  
sections 14  
to 16.

17. (1) Subject to subsection (2), the Committee may, on the application of a licensee or of an applicant for a licence, by notice in writing served on him adapt the requirements of any rules made under section 14, 15 or 16 to his circumstances or to the circumstances of any particular controlled investment business carried on by him.

(2) The Committee shall not exercise the powers conferred by subsection (1) in any case unless it appears to the Committee that—

- (a) compliance with the requirements in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors; and
- (b) the exercise of those powers will not result in any undue risk to investors.

(3) The powers conferred by subsection (1) may be exercised unconditionally or subject to conditions.

Promotion  
rules.

18. (1) Rules may prohibit, restrict or control the promotion of any controlled investment by or on behalf of licensees, whether by means of prospectuses, advertisements, invitations or otherwise.

(2) Without prejudice to the generality of subsection (1), rules may—

- (a) make provision as to prospectuses, and in particular—
  - (i) specify circumstances in which a prospectus must be issued, and prohibit or restrict the promotion of any specified category or description of controlled investment by any other means unless a prospectus has been issued in accordance with the rules;
  - (ii) prohibit, restrict or control the issue of prospectuses in relation to any specified description of controlled investment business;
  - (iii) impose requirements as to the form and content of prospectuses, including requirements as to their submission to, and authorisation by, the Committee;
  - (iv) make special provision concerning the submission to the Committee, and the publication, of updated information concerning the controlled investments to which a prospectus relates, and of corrections to and changes in that information, including special provision as to the payment of compensation to investors who suffer loss as a result of any omission from, or misleading statement in, any such prospectus or information;
- (b) prohibit licensees from promoting any category or description of controlled investment to the public;
- (c) restrict the circumstances and manner in which a licensee may promote any category or description of controlled investment to the public or to any description of persons.

Indemnity  
and com-  
pensation  
rules.

19. (1) Rules may provide for indemnity against any claim, or compensation for loss arising from inability to meet any claim, in respect of any description of civil liability incurred by a licensee in connection with his controlled investment business.

(2) For the purpose of providing for indemnity or compensation, rules under this section may—

- (a) authorise the Committee to establish, maintain and administer a fund or funds, or specify circumstances in which the Committee may do so;
- (b) authorise the Committee to take out and maintain insurance with a registered or exempt insurer;
- (c) require any person to whom the rules apply to take out and maintain insurance with a registered or exempt insurer.

(3) Without prejudice to the generality of subsections (1) and (2), rules under this section may—

- (a) specify the terms and conditions on which, and the extent to which, indemnity or compensation is to be available and any circumstances in which the right to it is to be excluded or modified;
- (b) provide for the management, administration and protection of any fund or funds maintained by virtue of rules under subsection (2)(a) and require licensees to make payments to any such fund, or specify the circumstances in which, and the terms upon which, the Committee may by notice in writing require them to make such payments;

- (c) require licensees to make payments by way of premium on any insurance policy maintained by the Committee by virtue of rules under subsection (2)(b);
- (d) prescribe the conditions which an insurance policy must satisfy for the purposes of rules under subsection (2)(c);
- (e) authorise the Committee to determine the amount which the rules require to be paid to the Committee or an insurer, subject to such limits or in accordance with such provisions as may be specified in the rules;
- (g) empower the Committee to take such steps as the Committee considers necessary or expedient to ascertain whether or not the rules are being complied with.
- (f) specify circumstances in which, where sums are paid by the Committee or an insurer in satisfaction of claims against a licensee, proceedings may be taken against that licensee by the Committee or the insurer;

20. (1) Rules may, subject to sections 7, 8, 9 and 28, and without prejudice to any other rules, or to any regulations (which, unless those rules or regulations otherwise specify or the context otherwise requires, apply to authorised collective investment schemes as they apply to any other category of controlled investment) make provision as to the constitution, conduct and dissolution of authorised collective investment schemes, the functions of their designated managers, trustees and custodians, and the rights of investors in such schemes.

Authorised  
collective  
investment  
scheme rules.

(2) Rules may specify (by the use of a number, a letter, a title or otherwise) different classes of

authorised collective investment schemes for the purposes of this Law; and, without prejudice to section 12(3), any rules such as are described in subsection (3) of this section may apply to, and make different provision in relation to, schemes falling within each class so specified.

(3) Without prejudice to the generality of subsection (1), rules may—

- (a) impose requirements, not inconsistent with Schedule 3, as to the contents of the trust deed, memorandum, articles of association or other instrument constituting an authorised collective investment scheme, including rules incorporating into any such instrument provisions overriding its express terms and, without prejudice to section 10, rendering the latter void to the extent of any inconsistency with any provision so incorporated;
- (b) regulate the issue and redemption of units in such schemes;
- (c) make provision as to the expenses of such schemes and the means of meeting those expenses;
- (d) restrict or regulate the investment and borrowing powers exercisable in relation to such schemes;
- (e) regulate or prohibit the carrying on of any other business or activity, or of any other description of business or activity, by the designated managers of such schemes;
- (f) impose restrictions on the extent to which, and requirements (including requirements

to obtain the authorisation of the Committee and as to the publication of proposals) as to the manner in which—

- (i) an amendment may be made to the terms of such a scheme; or
- (ii) a person carrying on any specified restricted activity in connection with such a scheme may be replaced.

*Investment business regulations*

21. (1) The Committee may make regulations concerning controlled investment business. Regulations  
under Part  
III.

(2) Without prejudice to the generality of subsection (1), regulations may make provision in respect of any of the matters referred to in sections 22 to 26 inclusive.

(3) Regulations may—

- (a) apply to all controlled investments or to any category or description of controlled investments, or to all restricted activities or to any description of restricted activities;
- (b) prescribe general conditions applicable to all licences, to prescribed classes of licences, to licences issued to prescribed classes of persons, to licences issued in respect of prescribed restricted activities or to licences issued for the carrying on of restricted activities in connection with prescribed categories or descriptions of controlled investments;
- (c) make different provision in respect of the different cases mentioned in paragraphs (a) and (b) of this subsection, in respect of



different circumstances within those cases and in respect of different circumstances generally;

- (d) exempt from compliance with the regulations, either unconditionally or subject to prescribed conditions, such categories or descriptions of restricted activities, controlled investments or licensees as may be prescribed, in such circumstances as may be prescribed;
- (e) contain transitional, incidental and supplementary provisions;
- (f) be varied or revoked by subsequent regulations.

(4) Regulations shall be laid before a meeting of the States as soon as may be after being made; and if, at that meeting or at their next meeting, the States resolve that the regulations be annulled, they shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

**Fees  
regulations.**

22. (1) Regulations may prescribe fees to be payable to the Committee—

- (a) in respect of any application for a licence or authorisation;
- (b) in respect of any document deposited, notification given, information furnished, or application or request made, under or for the purposes of this Law;
- (c) from time to time, in respect of licensees or authorised collective investment schemes.

(2) Regulations under this section may—

- (a) provide for the determination of any fee in accordance with a prescribed scale or other prescribed factors;
- (b) make provision as to the person by whom, and the time or intervals at which, any fee is to be payable.

(3) If any person by whom a fee is payable by virtue of regulations under this section fails to pay that fee as required by those regulations, no application, request or other thing in respect of which it is payable shall be regarded as duly made or done.

23. Regulations may limit the period of validity of licences issued under section 4 or authorisations issued under section 8.

Regulations limiting validity of licences or authorisations.

24. Regulations may—

Exemption regulations.

- (a) prescribe circumstances in which dealing in a controlled investment by a person as—
  - (i) a principal; or
  - (ii) a trustee for another person; or
  - (iii) a personal representative of a deceased person,

shall be deemed not to constitute the carrying on of controlled investment business by the first-mentioned person;

- (b) prescribe circumstances in which the issue by a person of an advertisement in connection with a controlled investment shall be deemed not to constitute the carrying on of controlled investment business by that person.

Unsolicited  
calls  
regulations.

25. (1) Regulations may prohibit any person from entering into any, or any description of, controlled investment agreement with an investor in the course of, or in consequence of, a personal visit or oral communication made without express invitation.

(2) Regulations under this section may provide that, subject to any prescribed modifications, section 32 of this Law is to apply in relation to any agreement entered into in contravention of those regulations as that section applies in relation to an agreement entered into in contravention of section 1 or in consequence of such a contravention.

Cancellation  
regulations.

26. Regulations may, without prejudice to section 32 or to any regulations making such provision as is referred to in section 25(2),—

- (a) enable an investor, or a person who has agreed to become an investor, to rescind a controlled investment agreement, or to withdraw an offer to enter into a controlled investment agreement, within such period and in such manner as may be prescribed;
- (b) require prescribed information to be given, in the form and manner and at the time prescribed, as to any such right of rescission or withdrawal;
- (c) provide for the restitution of property and the making and recovery of payments where any such right of rescission or withdrawal is exercised.

*Powers to obtain information*

Power to  
require  
information  
and produc-  
tion of  
documents  
etc.

27. (1) In this section “a relevant person”, in relation to a licensee, means—

- (a) any person who is, or who has at any time been, directly or indirectly employed (whether or not under a contract of service) by the licensee; and

- (b) any person who has, or who has at any time had, any direct or indirect proprietary, financial or other interest in or connection with the licensee.
- (2) The Committee may require a licensee or a relevant person—
- (a) to attend before the Committee, or before a person duly appointed by the Committee in that behalf (an “appointed person”) at a specified time and place, and to answer questions and otherwise furnish information appearing to the Committee or to the appointed person to be relevant to any restricted activity carried on by the licensee or to any controlled investment in connection with which he carries on that activity;
  - (b) to furnish the Committee or an appointed person, on any occasion or at specified times or intervals, with such information as the Committee or the appointed person may reasonably require about any specified matter relating to a controlled investment, or to any controlled investment business, being, if the Committee or the appointed person so requires, information verified in a specified manner.
- (3) It is hereby declared for the avoidance of doubt—
- (a) that a requirement to furnish information under paragraph (b) of subsection (2) may be imposed on, or in relation to, a particular licensee, all licensees of any class of licensees;
  - (b) that a requirement as to the manner in which such information is to be verified may direct its annexation to any accounts,

and that it be reported upon by the auditor of those accounts in such manner as the Committee may specify.

(4) The Committee may—

- (a) require a licensee or a relevant person to produce, at such time and place as the Committee may specify, such books or papers relating to a controlled investment, or to any controlled investment business, as the Committee may reasonably specify;  
or
- (b) authorise an appointed person, on producing (if required to do so) evidence of his authority, to require a licensee or a relevant person to produce to him forthwith any books or papers relating to a controlled investment, or to any controlled investment business, which that appointed person may reasonably specify.

(5) Where by virtue of subsection (4) the Committee or an appointed person has power to require the production of any books or papers from a licensee or a relevant person, the Committee or that appointed person shall have the like power to require production of those books or papers from any person who appears to the Committee or to that appointed person to be in possession of them.

(6) Any power conferred by or by virtue of subsection (4) or subsection (5) to require a person to produce books or papers includes power—

- (a) if the books or papers are produced—
  - (i) to take copies of them; and

(ii) to require the person who was required to produce them to provide an explanation of any of those books or papers;

(b) if any of the books or papers 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.

(7) A statement made by a person in compliance with a requirement imposed on him by virtue of this section may be used in evidence against him.

(8) Any power conferred by this section to require the production of books or papers includes power to require the reproduction in a legible form of any record maintained otherwise than in a legible form.

*Winding up etc.*

28. (1) The States may by Ordinance modify or supplement any enactment or rule of law appertaining to the winding up or other dissolution of a Bailiwick body in its application to such a body which carries on controlled investment business or which applies for a licence under section 3 or for an authorisation under section 8. Winding up  
etc.

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

(a) empower the Committee to petition for the winding up, or to take steps in relation to the dissolution, of a Bailiwick body;

(b) restrict or add to the descriptions of persons who may so petition or take such steps;

- (c) make special provision as to the grounds upon which, and the manner in which, a Bailiwick body may be wound up or dissolved, and for the application of the assets of such a body;
- (d) permit the continuation of any description of the business of a Bailiwick company with a view to its transfer as a going concern to another body, and empower the appropriate court to give directions and orders, including an order to reduce the amount of the contracts of the company in place of ordering it to be wound up;
- (e) make provision as to the personal responsibility of any person who is disclosed in the course of the winding up of a Bailiwick company to have been a party to the conduct of the business of that company with any fraudulent intent or for any fraudulent purpose.

## PART IV

### EXEMPT AND UNLICENSED PERSONS

**Exempt  
persons.**

29. (1) Subject to subsection (4) of this section, the provisions of section 1 of this Law do not apply to any activity carried on by—

- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark; or
- (b) the Royal Court, the Court of Alderney or the Court of the Seneschal of Sark; or
- (c) a person other than a Bailiwick body or an individual ordinarily resident in the Bailiwick if that person—

- (i) carries on that activity in or from within the Bailiwick in a manner in which he is permitted to carry it on in or from within, and under the law of, a designated country or territory which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to investors; and
  - (ii) has his main place of business in that country or territory and does not carry on any restricted activity from a permanent place of business in the Bailiwick; and
  - (iii) is recognised as a national of that country or territory by its law; and
  - (iv) has given written notice to the Committee of the date from which he intends to carry on that activity in or from within the Bailiwick and complied with the requirements applicable under section 3(1) to an applicant for a licence;
- or
- (d) a person acting as the servant or agent of another person ("his principal") if his principal—
    - (i) is a licensee, or is exempt from section 1 by virtue of any other paragraph of this subsection; and
    - (ii) is responsible, under the terms of his agreement with that servant or agent, for that activity of that servant or agent; and
    - (iii) has complied with the requirements of any rules made under section 16(2)(c);
- or



(e) such other person or body as the States may by Ordinance exempt from those provisions.

(2) Subject to subsection (4) of this section, section 7 of this Law does not apply to the carrying on by a licensee of a restricted activity in connection with a collective investment scheme if—

(a) the scheme is authorised under the law of a designated country or territory which, in the opinion of the Committee, affords in relation to schemes of that class or description adequate protection to investors;

(b) the activity is carried on in accordance with the requirements subject to which it may lawfully be carried on in that designated country or territory.

(3) In this section “designated country or territory” means a country or territory designated from time to time by regulations made by the Committee under this section; and section 21 applies in relation to any regulations so made as it applies in relation to regulations made under Part III.

(4) The States may by Ordinance limit the extent of any exemption conferred by or under this section.

Extension of  
powers to  
obtain  
information  
etc.

30. The powers of the Committee under section 27 may be exercised in relation to—

(a) an applicant for a licence; and

(b) a person who appears to the Committee to be carrying on controlled investment business,

in the same manner, and to the same extent, as if that person were a licensee

31. The States may by Ordinance provide that any provision of this Law which is expressed to apply only to licensees shall apply also, with or without modification, to any other person who carries on controlled investment business, including a person who would otherwise be exempt from the provisions of this Law by virtue of section 29.

Power to  
extend other  
require-  
ments.

## PART V

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Civil proceedings*

32. (1) Subject to subsection (3), a controlled investment agreement—

Agreements  
made by or  
through  
persons in  
breach of  
section 1.

(a) which is entered into by a person in the course of carrying on controlled investment business in contravention of section 1; or

(b) which is entered into

(i) by a licensee or by a person who is exempted in respect of the controlled investment business in the course of which he enters into the agreement; but

(ii) in consequence of anything said or done by a person in the course of carrying on controlled investment business in contravention of section 1,

shall be unenforceable against the other party; and that party shall be entitled to recover any money paid, or other property transferred, by him under the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer.

(2) The compensation recoverable under subsection (1) shall be such as the parties may agree or as the appropriate court may, on the application of either party, determine.

(3) The appropriate court may allow an agreement to which subsection (1) applies to be enforced, or money and property paid or transferred under it to be retained, if it is satisfied—

(a) in a case within paragraph (a) of that subsection—

(i) that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 1; and

(ii) that in his dealings with the other party he has acted substantially in accordance with the rules and regulations applicable to licensees made under Part III of this Law;

(b) in a case within paragraph (b) of subsection (1), that the person mentioned in subparagraph (i) of that paragraph neither knew nor ought to have known that the agreement was entered into as mentioned in subparagraph (ii) of that paragraph.

(4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him, or by virtue of this section recovers money paid or other property transferred by him under an agreement, he shall repay any money and return any other property received by him under the agreement.

(5) Where any property transferred under an agreement to which this section applies has passed to a third party references to that property in subsections (1), (3) and (4) shall be construed as references to its value at the time of its transfer under the agreement.

(6) A contravention of this Law shall not make an agreement illegal or invalid to any greater extent than is provided in this section or in regulations made under section 25(2).

33. (1) If on the application of the Committee the Ordinary Court is satisfied—

Injunctions  
and  
restitution  
orders.

(a) that there is a reasonable likelihood that a person will contravene any provision of section 1 or section 7 of this Law or of any rules or regulations made under this Law;  
or

(b) that a person has contravened any such provision and that steps could be taken to remedy the contravention,

the Ordinary Court may grant an injunction restraining the contravention or, as the case may be, order that person and any other person who appears to that Court to have been knowingly concerned in the contravention to take such steps as that Court may direct to remedy it.

(2) If on the application of the Committee the Ordinary Court is satisfied that a person has contravened a provision mentioned in subsection (1)(a) and either:

(a) that profits have accrued to any person as a result of that contravention; or

- (b) that any investor has suffered loss or been otherwise adversely affected as a result of that contravention,

the Ordinary Court may order that person to pay to that Court such sum as appears to that Court to be just having regard to the extent of any such profit, loss or adverse effect.

(3) Any sum paid to the Ordinary Court pursuant to an order under subsection (2) shall be paid out as that Court may direct to persons who have entered into transactions as a result of which profits have accrued, or to persons who have suffered loss or other adverse effect, as mentioned in that subsection.

(4) For the purpose of determining how to exercise its powers under subsections (2) and (3) the Ordinary Court may order any person appearing to that Court to have contravened a provision mentioned in subsection (1)(a) to furnish it with such accounts and other information, verified in such manner, as that Court may order.

(5) It is hereby declared for the avoidance of doubt that—

- (a) this section does not affect any other right of any person to bring proceedings; and
- (b) an application under this section constitutes “proceedings” for the purposes of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987(a).

**Actions for  
damages.**

34. Without prejudice to section 33, a contravention of any provision of—

- (a) rules or regulations made under this Law;  
or

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(a) Order in Council No. X of 1987.

(b) section 7 of this Law,  
is actionable in the appropriate court, as a breach of statutory duty by the person who has contravened that provision, at the suit of any person who has suffered loss or been otherwise adversely affected as a result of that contravention.

*Representations and appeals*

35. (1) This section and section 36 apply to any decision of the Committee—

Representations  
concerning  
decisions of  
Committee.

- (a) under section 4(1)(b), to refuse to grant an application for a licence; or
- (b) under section 5, to impose any condition on a licence (whether at the time of its issue or subsequently) or to vary any condition so imposed; or
- (c) under section 6, to cancel or suspend a licence otherwise than at the request of the licensee; or
- (d) under section 8(3), to refuse to grant an application for a declaration that a collective investment scheme is an authorised collective investment scheme of the class specified in the application; or
- (e) under section 9, to impose any condition on an authorisation (whether at the time of its issue or subsequently) or to vary any condition so imposed; or
- (f) under section 11, to revoke or suspend the authorisation of a collective investment scheme otherwise than at the request of the designated manager, trustee or custodian of the scheme.

(2) Before taking any decision mentioned in subsection (1) the Committee shall serve on the applicant, or, as the case may be, on the licensee,

or, in the case of an authorised collective investment scheme both on its designated manager and on its designated trustee or custodian, a notice in writing stating—

- (a) that the Committee is considering taking the decision for reasons which will be furnished in writing if that person so requests; and
- (b) that that person may, within 28 days of the date of the service of the notice, make written or oral representations to the Committee in such manner as the Committee may from time to time resolve; and
- (c) that in the event of the Committee taking the decision an appeal against the decision may be brought under section 36 of this Law.

(3) The Committee shall—

- (a) furnish written reasons why it is considering taking any decision mentioned in subsection (1) within two working days of being requested so to do in accordance with subsection (2); and
- (b) consider any representations made in response to a notice under subsection (2) before giving further consideration to the matter to which the notice relates.

(4) The period of 28 days mentioned in paragraph (b) of subsection (2) may be reduced, in any case in which the decision concerned is a decision under section 5, 6, 9 or 11 and in which the Committee considers it necessary to reduce that period, to such period of not less than two working days as the Committee may in any particular case resolve; and if the Committee does so resolve in any particu-

lar case then paragraph (a) of subsection (3) shall have effect as if for "two working days" there were substituted "24 hours".

(5) For the purposes of this section a working day is any day other than a Saturday, a Sunday and any day declared by an Ordinance of the States to be a bank holiday.

36. (1) A person aggrieved by a decision of the Committee to which this section applies may appeal to the Ordinary Court against that decision on the grounds that it was ultra vires or was an unreasonable exercise of the powers of the Committee.

Appeals  
against  
decisions of  
Committee.

(2) An appeal under this section shall be instituted—

- (a) within 28 days of the date on which notice in writing of the decision was served by the Committee on the person to whom the decision relates; and
- (b) by a summons served on the President of the Committee stating the grounds, and setting out the material facts, on which the appellant relies.

(3) If an appeal under this section has not been determined by the Ordinary Court within three months of the date of the summons by which it was instituted, the Committee may apply to the Ordinary Court, by a summons served on the appellant to show cause why the appeal should not be dismissed for want of prosecution; and upon the making of such an application the Ordinary Court may dismiss the appeal or make such other order as it considers just.

(4) On an appeal under this section the Ordinary Court may quash or confirm the decision of the Committee against which the appeal is



brought or may substitute any other decision which the Committee could have made.

(5) Subject to subsection (6), from the time of the institution of an appeal under this section the decision of the Committee against which the appeal is brought shall not operate so as to—

- (a) require the appellant to do anything which he would not otherwise have been required to do; or
- (b) prohibit the appellant from doing anything which he could otherwise have done,

unless and until the decision is confirmed by the Ordinary Court or the appeal is withdrawn or is dismissed for want of prosecution under subsection (3).

(6) The Ordinary Court may, upon the application of the Committee, direct that the provisions of subsection (5) shall not have effect in any particular case; and a direction under this subsection may be given on such terms as that Court thinks just.

(7) A decision of the Ordinary Court under this section shall be final as to any question of fact, but an appeal from such a decision shall lie to the Court of Appeal on any question of law within such period and in such manner as may be prescribed by Order of the Royal Court.

*Power to exclude liability*

Power to  
exclude  
liability.

37. The States may by Ordinance provide that no liability shall be incurred by the Committee, or by any other person or body specified in the Ordinance, in respect of anything done or omitted to be done after the commencement of the Ordinance in the discharge or purported discharge of any of the functions conferred on the Committee or on that other

person or body by or under this Law unless the thing is done or omitted to be done in bad faith.

*Criminal proceedings*

38. (1) A person who carries on, or holds himself out as carrying on, a restricted activity in contravention of section 1 is guilty of an offence. Offences

(2) A person who—

- (a) in connection with an application for a licence; or
- (b) in connection with an application for an authorisation declaring that a collective investment scheme is an authorised collective investment scheme; or
- (c) in purported compliance with a requirement under section 27,

furnishes information or makes a statement which he knows to be false or misleading in a material particular, or recklessly furnishes information or makes a statement which is false or misleading in a material particular, is guilty of an offence.

(3) A person who is knowingly party to the carrying on of controlled investment business with any fraudulent intent or for any fraudulent purpose is guilty of an offence.

(4) A person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or to offer to enter into a controlled investment agreement is guilty of an offence.

(5) A person who, with intent to avoid detection of the commission of an offence under this Law, removes from the Bailiwick, destroys, conceals or fraudulently alters any books or papers is guilty of an offence.

**Penalties.**

39. A person guilty of an offence under section 38 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 a fine not exceeding £1,000.

**Criminal proceedings against unincorporated bodies.**

40. (1) Without prejudice to section 41, proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in that of any of its members and, for the purpose of such proceedings, the service of any document on that body shall be carried out as if it were a document to be served under this Law.

(2) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid out of the funds of that body.

**Criminal liability of directors etc.**

41. (1) Where an offence under this Law committed by a body corporate or by an unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in any such capacity, he, as well as that body, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

*Supplementary*

42. Any notice or document to be served by or on behalf of the Committee under or in connection with this Law shall, without prejudice to any other valid method of service, be validly served—

Service of  
notices and  
documents.

- (a) on any person, if delivered to him, or left or sent by registered post or by recorded delivery service addressed to him, at his usual or last known place of abode;
- (b) on any unincorporated body, if delivered to any partner, manager or other similar officer of that body, or if left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of that body;
- (c) on any body corporate if left at, or sent by registered post or by recorded delivery service to, its registered office if situate in the Bailiwick or, if its registered office is not so situate, its principal or last known principal place of business in the Bailiwick;
- (d) on any licensee, or on any applicant for a licence, or on any person to whom section 29(1)(c) applies, if left at, or sent by registered post or by recorded delivery service to, his address in the Bailiwick furnished pursuant to section 3(1)(e).

**Ordinances.**

43. (1) The States may by Ordinance make provision for the purpose of carrying this Law into effect and for any matter for which provision may be made under this Law by Ordinance of the States.

(2) The States may by Ordinance empower the Committee to prescribe by regulations anything for which provision may be made under this Law by Ordinance of the States.

(3) An Ordinance under this Law may contain such transitional provisions, and such incidental or supplementary provisions, as appear to the States to be expedient for the purposes of the Ordinance.

(4) An Ordinance under this Law may make different provision in relation to different cases or circumstances.

(5) Any power conferred by this Law to make an Ordinance includes power to vary or revoke an Ordinance so made by a subsequent Ordinance.

**Interpretation.**

44. (1) In this Law, unless the context otherwise requires,—

“advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television, and “advertising” shall be construed accordingly;

“appointed person” has the meaning given in section 27(2)(a);

“appropriate court” means, in relation to any matter, the court in the Bailiwick having jurisdiction under the law for the time being

in force to determine or otherwise deal with that matter;

“authorised collective investment scheme” means a collective investment scheme declared in an authorisation issued by the Committee under section 8 to be an authorised collective investment scheme for the purposes of this Law; and “authorisation” shall be construed accordingly;

“the Bailiwick” means the Bailiwick of Guernsey;

“Bailiwick body” means a Bailiwick company or an unincorporated body whose principal place of business is in the Bailiwick;

“Bailiwick company” means a body incorporated under the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée”, registered on 21st March 1908(b) or under the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée”, registered on 22nd May 1894(c);

“body corporate” includes a body incorporated under the law of any country or territory;

“books or papers” includes accounts, deeds, writings and documents, however produced;

“collective investment scheme” means any arrangement such as is identified and described in paragraph 1 of Schedule 1;

“the Committee” means the States Advisory and Finance Committee or such other Committee or body as the States may specify by Ordinance;

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(b) Ordres en Conseil Vol. IV, p. 178.

(c) Ordres en Conseil Vol. II, p. 451.

“controlled investment” has the meaning given in section 1(3)(b) and Schedule 1;

“controlled investment agreement” means any agreement—

- (a) for or with a view to acquiring, disposing of, subscribing for or underwriting a controlled investment; or
- (b) under which a person is to receive advice as to the acquisition or disposal of, subscription for or underwriting of a controlled investment or as to the exercise of the rights conferred by a controlled investment; or
- (c) under which arrangements are to be made with a view to another person acquiring, disposing of, subscribing for or underwriting a controlled investment; or
- (d) under which a person’s controlled investments are to be managed;

“controlled investment business” has the meaning given in section 1(3);

“the Court of Appeal” means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961(d);

“designated country or territory” has the meaning given in section 29(3);

“designated manager” and “designated trustee or custodian”, in relation to an authorised collective investment scheme, means the person designated as such by the Committee for the purposes of this Law;

“group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary, and any other body corporate which is a subsidiary of that holding company; and for the purposes of this definition “subsidiary” and “holding company” are to be construed in accordance with section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971(e);

“investment exchange” means a market for the buying and selling of—

- (a) shares, debentures or securities; or
- (b) instruments entitling their holders to subscribe for, or certificates representing property rights in, shares, debentures or securities; or
- (c) contracts for property or commodity futures or contracts for differences; or
- (d) rights under insurance contracts the effecting and carrying out of which in the Bailiwick would constitute long term business within the meaning of the Insurance Business (Guernsey) Law, 1986(f); or
- (e) options to acquire or dispose of, or other rights or interests in, any investment mentioned in this definition;

“investor” means a person having any asset, right or interest (whether vested or contingent) in relation to a controlled investment;

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(e) Recueil d'Ordonnances Tome XVII, p. 225; Tome XVIII, pp. 24 and 55; No. XXVII of 1985.  
 (f) Ordre en Conseil No. XIII of 1986.



“a joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial reasons related to a business or businesses (other than controlled investment business) carried on by them; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise;

“this Law” includes any Ordinance made under this Law and any rules and regulations made under this Law;

“licence” means a licence to carry on controlled investment business issued under this Law; and “licensed” and “licensee” shall be construed accordingly;

“occupational pension scheme” has the meaning given in paragraph 1(4) of Schedule 1;

“open-ended investment company” means a collective investment scheme under which—

(a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds; and

(b) the investors are entitled under the terms of the scheme—

(i) to have their units redeemed or repurchased by, or out of funds provided by, the body; or

- (ii) to sell their units on an investment exchange at a price related to the value of the property to which they relate;
- “the Ordinary Court” means the Royal Court sitting as an Ordinary Court;
- “prescribed” means prescribed by regulations under this Law;
- “promotion” has the meaning given in Schedule 2, and related expressions shall be construed accordingly;
- “prospectus” means any prospectus, notice, circular, or other document containing detailed information about an offer to the public of any controlled investment for subscription, purchase or exchange;
- “the public” includes any section of the public, however selected, but a controlled investment is not promoted to the public by a promotion directly communicated to an identifiable category of persons not exceeding 50 in number if those persons are in possession of sufficient information to be able to make a reasonable evaluation of any offer included in the promotion and are the only persons who may accept any such offer;
- “recognised investment exchange” means an investment exchange which appears to the Committee to be situate in, and recognised as an investment exchange within the meaning of the law relating to investment exchanges of,—
  - (a) any member State of the European Economic Community; or

- (b) any prescribed country or territory; or
- (c) any country or territory specified in writing by the Committee in any particular case or for any particular purpose;

“a registered or exempt insurer” means an insurer who is registered under the Insurance Business (Guernsey) Law, 1986 as an insurer in respect of domestic business or who is exempt from section 6 of that Law in relation to insurance business of a description referred to in rules made under section 19 of this Law;

“regulations” means regulations made under this Law;

“relevant person” has the meaning given in section 27(1);

“restricted activity” has the meaning assigned by section 1(3)(c) and Schedule 2;

“specified class”, in relation to an authorised collective investment scheme, means a class specified by rules made under section 20(2);

“rules” means rules made under Part III of this Law;

“the States”, except in section 4(2), 4(3)(e) and 29(1)(a), means the States of Guernsey;

“units” means the rights and interests (however described) of investors in a collective investment scheme.

(2) Unless the context otherwise requires—

- (a) a reference in this Law to a numbered or lettered Part, section, subsection, paragraph or Schedule is a reference to the Part, sec-

tion, subsection or paragraph of, or to the Schedule to, this Law which is so numbered or lettered;

- (b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to the subsection or paragraph of that provision which is so numbered or lettered;
- (c) a reference in this Law to any enactment includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

(3) Any note in a Schedule to this Law is an integral part of this Law and shall be construed accordingly.

(4) The Interpretation (Guernsey) Law, 1948(g) applies to the interpretation of this Law throughout the Bailiwick.

45. (1) A person who, immediately before the day on which engaging in an activity first constitutes carrying on controlled investment business (whether because an investment becomes a controlled investment or because an activity becomes a restricted activity when carried on in connection with a controlled investment) was engaged in that activity by way of business shall, if he intends to continue so to engage, apply for a licence within two months of that day. Savings and transitional provisions.

(2) A person who makes an application as required by subsection (1) in relation to a restricted activity may, pending the determination of that application, continue to engage in that activity and

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(g) Ordres en Conseil Vol. XIII, p. 355.

shall not be regarded, by reason only of so doing, as carrying on controlled investment business in contravention of this Law.

(3) If—

- (a) a person was, immediately before the day on which section 7 comes into force, engaged in any activity referred to in that section in relation to a collective investment scheme; and
- (b) within two months of the day on which section 7 comes into force, an application is made to the Committee under section 8 for a declaration that the scheme is an authorised collective investment scheme,

that person may, pending the determination of the application referred to in paragraph (b), continue to engage in any such activity in relation to that scheme, notwithstanding that he may thereafter become a licensee, and shall not be regarded, by reason only of so doing, as acting in contravention of section 7.

Citation.

46. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

Commence-  
ment.

47. This Law shall come into force on such day as the States may by Ordinance appoint, and different days may be so appointed for different provisions of this Law or for different purposes.

Schedule 1      Section 1(3)(b)

*Controlled investments*

*Category 1: Collective investment schemes*

1. (1) A collective investment scheme constitutes a controlled investment for the purposes of this Law; and, subject to the provisions of this paragraph, a collective investment scheme is any arrangement relating to property of any description (including money)—

- (a) the purpose or effect of which is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income; and
- (b) in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions); and
- (c) under which—
  - (i) the contributions of the investors and the profits or income out of which payments are to be made to them are pooled; or
  - (ii) the assets to which the arrangement relates are administered (whether or not the investors become owners of different parts of those assets) as if they were assets of a business belonging to the person responsible for their administration.

(2) Where any arrangement provides for parts of the assets in question to be owned by different investors or for such pooling as is mentioned in sub-paragraph (1)(c)(i) of this paragraph in relation to separate parts of the property, the arrangement shall not be regarded as constituting a single collective investment scheme unless it has the characteristic mentioned in sub-paragraph (1)(c)(ii) of this paragraph or the investors are entitled to exchange rights in one part for rights in another.

(3) The following are not collective investment schemes—

- (a) an arrangement operated by a person otherwise than by way of business;
- (b) an arrangement where each of the investors carries on a business other than investment business and enters into the arrangement for commercial purposes related to that business;
- (c) an arrangement where each of the investors is a body corporate in the same group as the manager;
- (d) an arrangement where—
  - (i) each of the investors is a bona fide employee or former employee (or the wife, husband, widow, widower, child under the age of 18 or step-child under the age of 18 of such an employee or former employee) of a body corporate in the same group as the body corporate responsible for the management of the arrangement; and

- (ii) the property to which the arrangement relates consists of securities in or of a member of that group;
- (e) an arrangement where the receipt of the investors' contributions constitutes the acceptance of money for the purpose of investment on deposit within the meaning of Part I of the Protection of Depositors, Companies and Prevention of Fraud (Bailliwick of Guernsey) Law, 1969(h);
- (f) a franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trade name or design or other intellectual property or the good-will attached to it;
- (g) an arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular asset or to make its use or enjoyment available gratuitously to other persons;
- (h) a contract of insurance;
- (i) an occupational pension scheme which is an approved pension scheme within the meaning of the Income Tax (Guernsey) Law, 1975(i);
- (j) an arrangement in which the units of investors take the form of instruments which confer rights (other than options to

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(h) *Ordres en Conseil* Vol. XXII, pp. 28 and 518; Vol. XXVI, p. 225; No. V of 1983.

(i) *Ordres en Conseil* Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Nos. IV and VII of 1979; No. II of 1980; No. VIII of 1981; No. XI of 1982; No. XV of 1983; No. IX of 1984; No. XIII of 1986.



purchase) in or in relation to any one issue of shares or stock in a body corporate or an unincorporated body or of instruments creating or acknowledging indebtedness or of instruments entitling the holder to invest in such property;

- (k) a body corporate other than an open-ended investment company;
  - (l) a friendly society registered under an enactment relating to friendly societies and recognised by the Committee as being such a society.
- (4) In this paragraph "occupational pension scheme" means an arrangement comprised in one or more instruments or agreements which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

*Schedule 2*      Section 1(3)(c)

*Restricted activities*

The activities which, for the purposes of this Law, constitute restricted activities when carried on in connection with a controlled investment are:

1. *Promotion*, that is to say—
  - (a) advertising;
  - (b) issuing a prospectus, application form or proposal form;
  - (c) circulating or making available promotional material.
2. *Subscription*, that is to say receiving funds or assets for the purposes of investment.
3. *Registration*, that is to say—
  - (a) recording particulars of a specified investor;
  - (b) issuing a certificate or policy to a specified investor or to bearer.
4. *Dealing*, that is to say—
  - (a) buying, selling, subscribing for or underwriting an investment;
  - (b) making arrangements for another person to buy, sell, subscribe for or underwrite an investment;
  - (c) providing facilities for another person to realise the value of an investment.
5. *Management*, that is to say exercising any managerial function in relation to an investment or in relation to the assets underlying an investment.
6. *Administration*, that is to say providing any administrative, secretarial or clerical services in relation to an investment, including—

- (a) the provision of general accountancy and book-keeping services, but not the audit of accounts; and
- (b) the provision of valuation services on a continuing basis in connection with any dealing in an investment.

7. *Advising*, that is to say giving advice as to the purchase, sale, subscription for or underwriting of particular investments, or advice as to the exercise of rights conferred by particular investments.

8. *Custody*, that is to say holding as a trustee or custodian the assets underlying an investment or the evidence of title to those assets.

*Note A: Procurement of facilities*

Entering into a contract with a person for the performance by that person of any restricted activity also constitutes a restricted activity for the purposes of this Law.

*Note B: Incidental activities*

An activity undertaken in the course of a profession or business which is not controlled investment business does not constitute a restricted activity if it is undertaken without separate remuneration and is incidental to the carrying on of that profession or business.

*Note C: Groups and joint enterprises*

An activity described in paragraph 4, 5, 6, 7 or 8 of this Schedule is not a restricted activity if the parties involved—

- (a) are bodies corporate in the same group; or
- (b) are, or propose to become, participators in a joint enterprise and the activity is undertaken in connection with that enterprise.

*Schedule 3*                      Section 8(4)

*Requirements for authorised collective investment schemes*

1. The scheme must comply with all rules made under this Law applicable to the class of authorised collective investment scheme which it is declared to be.

2. The name of the scheme must not be undesirable or misleading.

3. The purposes of the scheme must be reasonably capable of being successfully carried into effect.

4. The scheme must entitle investors either :

- (i) to have their units redeemed or repurchased at a price related to the net value of the property to which the units relate; or
- (ii) to sell their units on a recognised investment exchange at a price not significantly different from that mentioned in sub-paragraph (i) of this paragraph.

5. The manager and the trustee or custodian of the assets of the scheme must each be a body corporate.

K. H. TOUGH,

Her Majesty's Greffier.