

# ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

## **The Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996**

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(Registered on the Records of the Island of Guernsey  
on the 20th January, 1997.)

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1996**

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 20th day of January, 1997 before Sir Graham Dorey, Bailiff; present:—Stanley Walter John Jehan, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of November, 1996, approving and ratifying a Projet de Loi entitled “The Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996”, the Court, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:—

# At the Court at Buckingham Palace

The 19th day of November, 1996

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 22nd day of October 1996 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 28th day of February 1996, the States of Deliberation at a meeting held on the 31st day of July 1996 approved a Bill or “Projet de Loi” entitled “The Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. 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 Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.”

“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 Islands of Guernsey, Herm and Jethou.

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.

*N. H. Nicholls*

(No.XIII - 1996)

PROJET DE LOI

ENTITLED

**The Insurance Business (Financial Guarantee Insurance:  
Special Provisions) (Guernsey) Law, 1996**

**ARRANGEMENT OF SECTIONS**

**Regulation by special Ordinance**

1. Designated financial guarantee insurers
2. FGI Ordinances : General
3. FGI Ordinances : Ambit
4. Application of other legislation to FGIs

**Winding-up, striking-off, and transfer of policies**

5. Winding-up and désastre of designated FGIs
6. Striking-off of designated FGIs
7. Transfer of financial guarantee insurance policies.

**Opening and effect of insolvency administration**

8. Grounds for administration
9. Application for order, and interim measures
10. General effect of administration
11. Effect of administration on security.

**Conduct of insolvency administration**

12. General duties of administrator
13. Powers of administrator
14. Notice of administration order
15. Statements of relevant people
16. Statement of administrator's proposals
17. Approval of proposals and sanction of scheme

**Discharge, replacement, etc.**

18. Discharge and variation of administration orders
19. Vacation of office and replacement of administrator

**Miscellaneous and supplementary**

20. Reserves and share capital
21. False statements etc.

- 22. Relationship of criminal and civil liability
- 23. Service of documents
- 24. Limitation of liability
- 25. Meaning of financial guarantee insurance and related expressions
- 26. General interpretation
- 27. Citation

Schedule: Powers conferred on an administrator

PROJET DE LOI

ENTITLED

**The Insurance Business (Financial Guarantee Insurance:  
Special Provisions) (Guernsey) Law, 1996**

THE STATES, in pursuance of their Resolution of 28th February, 1996(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of Law in the Islands of Guernsey, Herm and Jethou.

**Regulation by special Ordinance**

**Designated financial guarantee insurers**

1. (1) The States may by Ordinance

(a) designate any Guernsey company identified in that Ordinance for the purpose of this Law, and

(b) make such special provision in relation to any particular Guernsey company so designated as appears to the States to be necessary or expedient for the effective regulation of financial guarantee insurance business carried on by that company.

(2) A Guernsey company designated for the purposes of this Law in an Ordinance made under this section is referred to in this Law as a "designated FGI" or as an "FGI".

**FGI Ordinances : General**

2. (1) An Ordinance under section 1 in relation to any particular designated FGI may provide for the imposition of any prohibition, restriction, control, condition or requirement -

(a) directly, or

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(a) on Article 12 of Billet d'État No. III of 1996.

- (b) through a licence issued by the Commission, or
- (c) by means of directions given by the Commission under that Ordinance or under such a licence, or
- (d) by any combination of the means set out in paragraphs (a), (b) and (c) of this subsection.

(2) An Ordinance under section 1 may -

- (a) include provisions binding on the directors, employees, officers (including auditors) and agents of an FGI as well as provisions binding on the FGI itself,
- (b) include provisions of continuing application following the expiry or revocation, or during the suspension, of any licence issued to the FGI,
- (c) contain financial provisions, including provisions as to the payment of penalties, and of such fees as may be prescribed by regulations made under this Law,
- (d) create offences punishable on summary conviction by fines exceeding the amount of level 5 on the Uniform Scale, and/or by a daily default fine,
- (e) supplement, modify, or disapply any other enactment as respects the FGI in relation to which the Ordinance is made,
- (f) declare that the licensing and supervision of a designated FGI pursuant to this Law and that Ordinance, is a statutory function of the Commission for the purpose of section 2(3)(b)



of the Financial Services Commission (Bailiwick of Guernsey)  
Law, 1987(b)

- (3) An Ordinance under section 1 may -
  - (a) be amended or repealed by a subsequent Ordinance under that section;
  - (b) contain consequential, incidental, supplementary and transitional provisions.
- (4) The power conferred by section 1 to make an Ordinance may be exercised -
  - (a) in relation to all cases to which the power extends, 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;
    - (iii) any such provision either unconditionally or subject to any specified conditions.

(5) Subsections (2) to (4) of this section apply with the necessary modifications (and subject in the case of a licence to any provision for appeal made by the Ordinance under which it is issued) in the case of licences and directions issued or given pursuant to an Ordinance under section 1 as those subsections apply in the case of such an Ordinance.

(6) Regulations under this Law in relation to fees

- (a) shall be made by the States Advisory and Finance Committee after consultation with the Commission;
- (b) shall not take effect until 30 days after notice of intention to make them has been given to the FGI concerned;
- (c) shall be laid before the States as soon as possible and shall cease to have effect (without prejudice to anything done under them or to the making of new regulations) if at the meeting before which they are laid or at their next meeting the States resolve that they be annulled.

### **FGI Ordinances : Ambit**

3. (1) An Ordinance under section 1 may, whether directly or by any other of the methods set out in section 2(1), regulate all or any aspects of the constitution, membership, organisation, management, control, assets, resources, accounts, business and dissolution of the designated FGI in respect of which it is made; and, without prejudice to the generality of the foregoing, may in particular make provision in relation to any of the matters set out in subsection (2).

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

- (a) the making of applications to the Commission for any licence, consent, authorisation or approval required by or under the Ordinance, including the information to be furnished and fees to be paid in connection with such applications;

- (b) the criteria to be satisfied for the grant of any such licence, consent, authorisation or approval; the conditions which may or must be attached to it; its issue, duration, endorsement and return; and the circumstances and manner in which it may be varied, suspended, cancelled or revoked;
- (c) the cases, circumstances and manner in which the designated FGI may appeal against decisions of the Commission under the Ordinance;
- (d) restrictions on the extent to which the FGI may lawfully carry on
  - (i) financial guarantee insurance business;
  - (ii) other descriptions of insurance business;
  - (iii) any other business;
- (e) the establishment, maintenance, and treatment in accordance with specified requirements, of:
  - (i) minimum amounts of issued and paid-up share capital,
  - (ii) reserves in respect of unearned premiums, losses, and other contingencies,
  - (iii) undistributed surplus shareholders' funds;
- (f) exposure limits in relation to individual risks, specified categories of risk, and overall;

- (g) the terms of insurance policies written by the FGI, and requirements as to re-insurance, including the approval of re-insurers by the Commission;
- (h) the maintenance and audits of accounts, including the approval of auditors by the Commission and the duties and immunities of auditors as respects the reporting of matters to the Commission;
- (i) the appointment and responsibilities of a person approved by the Commission as the FGI's general representative in Guernsey;
- (j) the submission to the Commission of plans of operation, annual returns, accounts and other documents, and the notification of other specified matters to the Commission.

#### **Application of other legislation to FGIs**

4. (1) The Insurance Business (Guernsey) Law, 1986(c) does not apply as respects the carrying on by a designated FGI of any insurance business which that FGI is authorised to carry on by or under an Ordinance made under section 1, except to such extent as may be specified by that Ordinance.

(2) Every other enactment for the time being in force applies to all designated FGIs subject only to the provisions of this Law and of any Ordinance making such provision as is mentioned in section 2(2)(e).

#### **Winding-up, striking-off, and transfer of policies**

#### **Winding-up and désastre in relation to designated FGIs**

5. (1) Notwithstanding any enactment or rule of law to the contrary no application may be made for the winding-up of a designated FGI, nor for a designated

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(c) Ordres en Conseil Vol. XXIX, p.214.

FGI to be declared en désastre, other than an application made by or with the consent of the Commission.

(2) The Commission may apply for the winding-up of a designated FGI if it appears to the Commission, taking into account any representations made by the FGI or by any policyholder, that it is expedient in the public interest that the FGI should be wound up.

(3) Notice of any application for the winding-up of a designated FGI by a person other than the Commission must be served on the Commission at least seven days before the date when the application is due to be heard; and the Commission is entitled to be heard on any such application.

(4) On the making of an administration order under section 8 in respect of a designated FGI any application for the winding-up of that FGI then pending is deemed to have been dismissed.

(5) Notwithstanding any enactment or rule of law or any provision of the Articles of Association of an FGI to the contrary, no resolution of the shareholders of the FGI in general meeting to wind-up the FGI shall take effect without the consent of the Commission.

(6) The Commission must not grant its consent for the purposes of this section unless the FGI has made such provision as the Commission considers adequate for the protection of all interested parties.

#### **Striking-off of designated FGIs**

6. (1) Notwithstanding any enactment or rule of law to the contrary an FGI shall not be struck off the Register, and no notice in respect of the striking off of companies under the Companies Law shall be issued or published in relation to an FGI, without the consent of the Commission.

(2) This section applies subject to any order of the Court making such provision as is mentioned in section 7(9)(d).

**Transfer of financial guarantee insurance policies**

7. (1) A designated FGI may with the approval of the Court implement a scheme under which the whole or part of the financial guarantee insurance business carried on by it is transferred to another body, whether incorporated or registered in Guernsey or elsewhere.

(2) No such transfer as is mentioned in subsection (1) shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court on an application made by the designated FGI in accordance with this section.

(3) The Court shall not determine an application under this section unless:

- (a) the application is accompanied by a report on the terms of the scheme by an independent expert approved by the Commission; and
- (b) the application has been approved by the Commission; and
- (c) the Court is satisfied that the requirements of subsection (4) have been complied with.

(4) The requirements of this subsection are:

- (a) that a notice has been published in La Gazette Officielle, and in at least one newspaper having an international circulation and approved for the purpose by the Commission, in each case on at least two occasions, stating:
  - (i) that the application is to be made; and
  - (ii) that copies of the application and of the report referred to in subsection (3) are available for inspection at all reasonable times at an address in Guernsey set out in the notice, and that copies of

the report are available for purchase there on payment of a reasonable sum; and

(b) except where the Court has otherwise directed, that a statement -

(i) setting out the terms of the scheme; and

(ii) containing a summary of the report mentioned in subsection (3) sufficient to indicate the opinion of the expert referred to in paragraph (3)(a) on the likely effects of the scheme on the holders and beneficiaries of financial guarantee insurance policies issued by the FGI

has been sent to each of those policyholders and to every shareholder of the FGI;

(c) that 21 days have elapsed since the notice referred to in paragraph (a) was last published in accordance with that paragraph;

(d) that copies of the application and of the report mentioned in subsection (3) have been available for inspection at an address in Guernsey set out in the notice during that period of 21 days, and that copies of the report have been available for purchase there during that period on payment of a reasonable sum.

(5) On any application under this section the following shall be entitled to be heard namely:

(a) the Commission; and

- (b) the holder of any financial guarantee insurance policy written by the FGI.

(6) The Court shall not make an order sanctioning the scheme unless:

- (a) it is satisfied that the transferee is, or will be immediately after the making of the order, either:
  - (i) licensed by the Commission to carry on financial guarantee insurance business pursuant to an Ordinance made under this Law; or
  - (ii) authorised within the jurisdiction of any other country or territory which is a member of the OECD for the purpose of writing financial guarantee insurance business; and
- (b) the Commission has certified, from audited statements provided by the transferee's auditors, its opinion that the transferee possesses and will maintain adequate reserves, equivalent to the reserves required to be maintained by the FGI pursuant to any Ordinance made under this Law, in relation to the financial guarantee insurance policies to be transferred to that body.

(7) If any policy which is included in the proposed transfer is a contract of direct insurance the Court shall not make an order sanctioning the scheme unless the Commission has certified:

- (a) that the authority having supervisory and/or regulatory authority in the jurisdiction in which the transferee is constituted, and (if different) such authority in any country or territory in which the transferee proposes to undertake the financial guarantee insurance business to be transferred to it, has been notified of the proposed scheme; and



- (b) that all such authorities have consented to the scheme.

(8) Upon making an order under this section sanctioning a scheme the Court shall direct that:-

- (a) notice of the making of that order, and of the execution of any instrument giving effect to the transfer, shall be published in Guernsey and in any other jurisdiction considered by the Court to be relevant for the purpose of the transfer in such manner as the Court may direct; and
- (b) the notice shall specify the period during which policyholders may exercise any right to cancel policies;

and neither the order nor any such instrument shall bind any policyholder if either the notice is not so published or the policyholder exercises any such right during the period so specified.

(9) Where the Court makes an order under this section sanctioning a scheme the Court may, either by that order or by a subsequent order made on the application of the FGI, 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, property or liabilities of the FGI;
- (b) the allotting or appropriation by the transferee of any shares, debentures, policies or 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 actions or proceedings by or against the FGI;

- (d) the striking of the FGI off the Register, and publication of notice in that connection, as if under section 76(4) of the Companies Law;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme is fully and effectively carried out.

(10) Where an order under this section provides for the transfer 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 order be transferred to and become the liabilities of, the transferee, and, in the case of any property in respect of which the order so directs, released from any security which is by virtue of the scheme to cease to have effect.

(11) Subject to subsection (8), any scheme sanctioned by the Court under this section shall be valid and binding on all policyholders.

(12) Where a scheme is sanctioned by the Court under this section the transferee must, within 10 days from the date on which the order is made or such longer period as the Commission may allow, deposit two certified copies of the order with the Commission.

### **Opening and effect of insolvency administration**

#### **Grounds for administration**

8. (1) For the purposes of this Law an administration order is an order appointing as administrator a person approved by the Commission, and directing that during the period for which the order is in force the affairs, business and property of the FGI shall be managed by that person ("the administrator") in accordance with this Law.

(2) The purposes for the achievement of which an administration order may be made are:

- (a) the survival of the FGI and the whole or any part of its undertaking as a going concern;
  - (b) the approval of a voluntary arrangement between creditors, policyholders, and other persons interested in the FGI;
  - (c) the protection of the property of the FGI from creditors;
  - (d) the opportunity for the FGI to take action so as to create the levels of solvency and reserves required by any Ordinance made in relation to it under this Law;
  - (e) a more advantageous realisation of the FGI's property than would be likely on the winding-up of the FGI.
- (3) Subject to section 9(1), if the Court -
- (a) is satisfied
    - (i) on application by a designated FGI, that the FGI is or is likely to become unable to pay its debts (within the meaning given to that expression by section 95 of the Companies Law); or
    - (ii) on application by the Commission, that the FGI has insufficient solvency to meet the requirements of any Ordinance made in relation to that FGI under this Law; and
  - (b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned in subsection (2),

the Court may make an administration order, specifying each such purpose as a purpose for which it is made, in relation to the FGI.

### **Application for order, and interim measures**

9. (1) An application to the Court for an administration order may be made ex parte by the FGI, by the directors of the FGI, and/or by the Commission; but an application made otherwise than by the Commission shall not be determined unless the Court is satisfied that the Commission has consented to the application.

(2) During the period beginning with the making of an application for an administration order and ending with the making of such an order or the dismissal of the application:

- (a) no resolution may be passed, and no order may be made, for winding-up of the FGI;
- (b) no step may be taken to enforce any security over the FGI's property, except with the leave of the Court and subject to such terms as the Court may impose, and
- (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the FGI or its property, except with the leave of the Court and subject to such terms as the Court may impose.

(3) For the purposes of subsection (2) an application is made when it is first presented before the Bailiff.

(4) Subject to subsection (1) on hearing an application the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(5) Without prejudice to the generality of subsection (4) an interim order under that subsection may restrict the exercise of any powers of the FGI or its directors (whether by reference to the consent of the Court or the Commission or otherwise).

### **General effect of administration**

10. (1) Whilst an administration order is in force in relation to a designated FGI its affairs, business and property are to be managed by the appointed administrator in accordance with this Law, and the restrictions set out in subsection (2) are applicable.

(2) the restrictions referred to in subsection (1) are that -

- (a) no resolution may be passed, and no order may be made, for the winding-up of the FGI;
- (b) no step may be taken to enforce any security over the FGI's property, except with the consent of the administrator, or with the leave of the Court and subject (where the Court gives leave) to such terms as the Court may impose;
- (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the FGI or its property, except with the consent of the administrator, or with the leave of the Court and subject (where the Court gives leave) to such terms as the Court may impose.

(3) Every policy, invoice, order for goods, or business letter, which at a time when an administration order is in force in relation to an FGI is issued by or on behalf of that FGI or the administrator, being a document on or in which the FGI's name appears, must also contain the administrator's name and a statement that the affairs, business and property of the FGI are being managed by the administrator.

(4) If default is made in complying with subsection (3) the FGI and any person who without reasonable excuse authorises or permits the default is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale; and, for the avoidance of doubt, every such default is a separate offence.

### **Effect of administration on security**

11. (1) Where on an application by the administrator the Court is satisfied that the disposal (with or without other assets) of any property of the FGI which is subject to any security would be likely to promote a purpose specified in the administration order, the Court may authorise the administrator to dispose of the property as if it were not subject to that security.

(2) Where property is disposed of under subsection (1) the holder of the security has the same priority in respect of any property in the FGI directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(3) It shall be a condition of an authorisation under subsection (1) that:-

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sum secured by the security.

### **Conduct of insolvency administration**

#### **General duties of administrator**

12. (1) The administrator of an FGI must on his appointment take into his custody or under his control all the property to which the FGI is or appears to be entitled.

(2) The administrator must manage the affairs, business and property of the FGI -

- (a) at any time before a scheme has been approved and sanctioned under section 17, in accordance with any directions given by the Court; and
  - (b) at any time after a scheme has been so approved and sanctioned, in accordance with the scheme as from time to time revised.
- (3) The administrator must summon a meeting of the FGI's creditors, policyholders, or both, whenever -
  - (a) he is so requested by the Commission; or
  - (b) he is so directed by the Court on the application of a creditor or policyholder.

**Powers of administrator**

13. (1) The administrator of an FGI -
- (a) may do all such things as may be necessary for the management of the affairs, business and property of the FGI; and
  - (b) without prejudice to the generality of paragraph (a), has the powers specified in the Schedule to this Law.
- (2) The administrator also has power:-
- (a) with the prior approval of the Commission, to remove any director of the FGI and to appoint any person approved by the Commission to be a director of the FGI, whether to fill a vacancy or otherwise;
  - (b) to call any meeting of the shareholders, creditors or policyholders of the FGI.

(3) The administrator may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(4) Any power conferred on the FGI or its officers (whether by this Law, the Companies Law, the FGI's Memorandum or Articles of Association or otherwise) which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) When exercising his powers the administrator is deemed to act as the agent of the FGI.

(6) A person dealing with the administrator in good faith and for value is not required to enquire whether the administrator is acting within his powers.

(7) In the interests of clarity, the powers conferred by this section and the Schedule on the administrator are exercisable only in accordance with, and subject to the requirements of, this Law and all other enactments and rules of law applicable to the FGI.

#### **Notice of administration order**

14. When an administration order has been made the administrator must-

- (a) forthwith cause a copy of the order to be served on the FGI; and
- (b) within seven days cause a notice of the order to be published in La Gazette Officielle and in at least one newspaper having an international circulation and approved for the purpose by the Commission, in each case on at least two occasions; and
- (c) unless the Court otherwise directs, within 28 days send a copy of that notice to all policyholders and creditors of the FGI.



### **Statements of relevant people**

15. (1) When an administration order has been made the administrator must forthwith require some or all of the people mentioned below to make out and submit to him statements as to the affairs of the FGI, which statements must be verified by affidavit by the persons required to submit them and must show:-

- (a) particulars of the FGI's assets, debts and liabilities;
  - (b) particulars of all financial guarantee insurance policies written by the FGI;
  - (c) particulars of the reserves maintained by the FGI pursuant to any Ordinance made in relation to the FGI under this Law;
  - (d) the names and addresses of its policyholders, and counter parties to all contracts of insurance and reinsurance written by the FGI
  - (e) all securities given by or in favour of the FGI
  - (f) the dates when those securities were given; and
  - (g) such other information as may be ordered by the Court.
- (2) The people referred to in subsection (1) are :
- (a) those who are or have been officers of the FGI;
  - (b) the general representative of the FGI;
  - (c) anybody who is, or who has within one year before the date of this administration order been,
    - (i) involved in the formation of the FGI;

- (ii) employed by the FGI;
- (iii) an officer of, or employed by, a company which is or was itself an officer of the FGI;

and in this subsection "employed" includes being employed under a contract to provide services, as well as being employed under a contract of service.

(3) Subject to subsection (4), a person required under this section to submit a statement of affairs to the administrator, must do so within 21 days.

(4) The administrator may -

- (a) at any time release a person from an obligation imposed on him under subsection (1); or
- (b) either when making the requirement or subsequently, extend the period mentioned in subsection (3);

and if the administrator unreasonably refuses to exercise a power conferred by this subsection the Court may exercise it on the application of the person concerned.

(5) A person who without reasonable excuse fails to comply with any requirement made under this section is guilty of an offence, and liable on conviction to a fine not exceeding level 5 on the uniform scale, and to a daily default fine.

#### **Statement of administrator's proposals**

16. (1) Within 3 months, or such longer period as the Court may allow, after the making of an administration order, the administrator must -

- (a) send to -
  - (i) the Commission, and

- (ii) so far as he is aware of their identities and addresses, all interested parties,

a statement of his proposals for achieving the purpose or purposes specified in the order; and

- (b) lay a copy of that statement before a meeting of the FGI's policyholders, and before a meeting of the FGI's creditors, both summoned for the purpose on not less than 14 days' notice.

(2) The administrator must also, within 3 months or such longer period as the Court may allow after the making of the order, either -

- (a) send a copy of the statement (so far as he is aware of their addresses) to all shareholders of the FGI; and
- (b) publish in La Gazette Officielle, and in at least one newspaper having an international circulation and approved for the purpose by the Commission, in each case on at least two occasions, a notice stating an address to which interested parties should write for copies of the statement to be sent to them free of charge.

(3) If the administrator without reasonable excuse fails to comply with this section he is guilty of an offence, and liable on summary conviction to a fine not exceeding level 5 on the uniform scale, and to a daily default fine.

#### **Approval of proposals and sanction of scheme**

17. (1) The administrator's proposals shall not be submitted for approval by creditors and policyholders unless they have first been approved by the Commission.

(2) The following provisions apply to any meeting summoned in accordance with section 16(1)(b):

- (a) the purpose of the meeting is to decide whether or not to approve a scheme giving effect to the administrator's proposals;
- (b) the meeting may be held at any place approved by the Commission, whether in Guernsey or elsewhere;
- (c) a policyholder or creditor may attend the meeting in person or be represented by proxy;
- (d) a list of the names and addresses of all policyholders or known creditors, as the case requires, showing the values of their respective policies or claims, must be available for inspection throughout the meeting;
- (e) the policyholders or creditors present in person shall elect one of their number as chairman;
- (f) a proposition to modify the administrator's proposals shall not be put to the vote unless the administrator and the Commission both consent to the modification;
- (g) any resolution of the meeting requires a simple majority of the votes cast;
- (h) the chairman may at his option, subject to paragraph (i) of this subsection, take a vote on a show of hands or on a poll; and in the case of a vote on a show of hands the declaration of the chairman that a resolution has been carried or rejected is deemed to be the decision of the meeting;
- (i) any one or more policyholders or creditors present in person or represented by proxy and holding between them at least one tenth in value of the issued policies or known claims, as the case requires, may, before a proposition has been put to

the vote or immediately after a vote has been taken on a show of hands, demand a poll;

(j) for the purpose of ascertaining the number of votes cast:

(i) on a show of hands, every policyholder or creditor present in person has one vote;

(ii) on a poll, every policyholder or creditor present in person or represented by proxy has one vote for each £1 sterling of the value of his policy or claim;

(iii) in the case of an equality of votes the chairman has another vote

(k) the meeting may adjourn from time to time, an adjourned meeting has the same powers as the original meeting, and any resolution passed at an adjourned meeting is deemed to have been passed when actually passed and not on the date of the original meeting;

(3) After the conclusion of a meeting at which the administrator's proposals have been approved (with or without modification) the administrator must publish in La Gazette Officielle and in at least one newspaper having an international circulation and approved for the purpose by the Commission, in each case on at least two occasions, a notice of the date and time when he will apply to the Court pursuant to subsection (4), and of the rights of creditors and policyholders under subsection (5).

(4) The administrator must report to the Court the result of the meeting, and, if the meeting has approved a scheme giving effect to his proposals (with or without modification) must apply to the Court, on the date and at the time of which he has given notice pursuant to subsection (3), to sanction that scheme.

(5) On the hearing of an application for sanction under subsection (4) any policyholder or creditor who was present or represented by proxy at the meeting by

which the scheme was approved is entitled to oppose the application on the ground, and only on the ground, that the scheme would if sanctioned be unjust or oppressive in his particular case.

(6) An application for sanction under subsection (4), and any opposition to such an application, shall be dealt with summarily; and the Court may sanction the scheme on such terms as it considers appropriate, or may refuse to sanction the scheme.

(7) A scheme sanctioned by the Court under this section is binding on all policyholders and all creditors.

(8) If a report is given to the Court under subsection (4) that the meeting has declined to approve the administrator's proposals (with or without modifications), the Court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

#### **Discharge, replacement etc.**

#### **Discharge and variation of administration orders**

18. (1) The administrator of an FGI may at any time apply to the Court for the administration order to be discharged, or to be varied (whether by specifying an additional purpose or otherwise).

(2) The administrator must make an application under this section if:-

- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement; or
- (b) he is required to do so by a meeting of the FGI's creditors summoned for the purpose in accordance with the terms of the administration order.

(3) On the hearing of an application under this section the Court may, after hearing the Commission, discharge or vary the administration order and make such consequential order as it thinks fit, or may adjourn the hearing conditionally or unconditionally or make an interim order or any other order it thinks fit.

(4) Where the administration order is discharged or varied the administrator must within 14 days after the making of the order effecting the discharge or variation send a copy of that order to the Commission

### **Vacation of office and replacement of administrator**

19. (1) The administrator may not resign his office without the approval of the Court under subsection (2).

(2) The Court may by order direct the removal, or approve the release, of the administrator from his office, on an application being made to it in that regard -

- (a) by the Commission; or
- (b) in the prescribed circumstances, by the administrator;

and may upon making such an order, or if the administrator has died, appoint a person approved by the Commission as administrator in his place.

(3) The "prescribed circumstances" are -

- (a) ill health of the administrator;
- (b) a conflict of interest which precludes the administrator from further discharging his duties;
- (c) in the case of a joint appointment, where it is no longer expedient that both or all should continue in office;
- (d) where the Court is satisfied that there are other good reasons to relieve the administrator of his office.

(4) When a person ceases to be the administrator of an FGI in consequence of an order under subsection (2), or in consequence of the discharge of the administration order, or on his death -

- (a) his proper remuneration and expenses as administrator shall be paid out of any property of the FGI in his custody or under his control at that time in priority to any security under rights of creditors and/or policyholders; and
- (b) any sums payable under contracts entered into or adopted by him or a predecessor of his as administrator shall be paid out of any such property as is mentioned in paragraph (a) in priority to all claims described in that paragraph ; and
- (c) the Court may order, on such terms and with effect from such date as may be specified in the order, that he be discharged from all liability in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

**Miscellaneous and supplementary**

**Reserves and share capital**

20. (1) Notwithstanding any enactment or rule of law to the contrary, any reserves in respect of unearned premiums, losses or other contingencies required to be maintained by a designated FGI pursuant to any Ordinance made under section 1 are not available for distribution to shareholders of the FGI (whether by way of dividend or otherwise) and may not be applied or used in the purchase by the FGI of its own shares.

(2) Notwithstanding any enactment or rule of law to the contrary, no resolution or application to the Court for reduction of the share capital of a designated FGI under the Companies Law shall take effect or be made without the consent of the Commission, which must not be granted unless the Commission is satisfied that adequate provision has been made for the protection of all interested parties.



**False statements, etc.**

**21.** (1) A person who, in or in connection with any document report or record required by or for the purposes of this Law, or in compliance or purported compliance with any requirement imposed by or under this Law, or otherwise for the purposes of this Law,

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement which is false, deceptive or misleading in a material particular;
- (c) produces, 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
- (d) 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,

is guilty of an offence.

(2) A person guilty of an offence under this section is liable:-

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

### **Relationship of criminal and civil liability**

**22.** The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability; and civil proceedings in respect of that act or omission may be commenced or continued notwithstanding the institution of any criminal proceedings.

### **Service of documents**

**23.** (1) Any document other than a summons to be given or served under or for the purposes of this Law may be given or served -

- (a) on an FGI, by being left at or sent by post or transmitted to the general representative of the FGI or the registered office of the FGI; or
- (b) on a director of an FGI, by being left at or sent by post or transmitted to the registered office of the FGI; or
- (c) on any other 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; or
- (d) on the Commission, by being left at or sent by post or transmitted to the office of the Commission;

and in this section "**by post**" means by registered post or recorded delivery service, and "**transmitted**" means transmitted by telex, facsimile transmission or any similar means capable of reproducing a document containing the text of the communication.

(2) If service of a document cannot after reasonable enquiry be effected in accordance with this section the document may be served by being published in La Gazette Officielle and in at least one newspaper having an international circulation and approved for the purpose by the Commission, in each case on at least two occasions.

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

(4) Notwithstanding the provisions of subsections (1) to (3) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Commission under this Law shall be deemed to have been given or served until it is received.

#### **Limitation of liability**

24. No liability is incurred by, or by any Committee of, the States, or by the Commission, or by any member, officer or servant of the States or the Commission, in respect of anything done or omitted to be done in the discharge or purported discharge of any function conferred by or under this Law unless the thing was done or omitted to be done in bad faith.

#### **Meaning of financial guarantee insurance and related expressions**

25. (1) For the purposes of this Law "financial guarantee insurance" means any policy of insurance, surety bond, financial guarantee, guaranteed investment contract, any obligation entered into by way of reinsurance of the obligations of a provider of financial guarantee insurance, and any guarantee similar to the foregoing types, under which an amount is payable to an insured claimant, obligee or indemnitee as a result of any of the following events:

(a) failure of any obligor or issuer of any debt instrument or other monetary obligation (including equity securities guaranteed under a surety bond, insurance policy or indemnity contract) to pay

(i) when due to be paid by the obligor or issuer, or

(ii) at the time insured to be received by the holder of the obligation,

principal, interest, premium, dividend or purchase price of or on, or other amounts due or payable with respect to, that instrument or other obligation (regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor or issuer which has also defaulted)

provided that either

- (i) the obligation is investment grade; or
  - (ii) the obligor's or issuer's failure results from its financial default or insolvency;
- (b) changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products;
- (c) changes in the rates of exchange of currencies;
- (d) changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or
- (e) other events which the Commission determines, and notifies to a designated FGI, to be substantially similar to any of the foregoing.

(2) Notwithstanding subsection (1), no licence or authority to carry on financial guarantee insurance business issued under this Law authorises the carrying on of business involving any of the following, unless expressly authorised by the Commission:

- (a) insurance of any loss resulting from any event described in subsection (1) if a claim is payable only upon the occurrence of:
  - (i) a fortuitous physical event; or
  - (ii) failure of or deficiency in the operation of equipment; or
  - (iii) an inability to extract or recover a natural resource;

- (b) fidelity and surety insurance;
  - (c) credit insurance;
  - (d) credit unemployment insurance;
  - (e) residual value insurance;
  - (f) any other form of insurance covering risks which the Commission determines, and notifies to a designated FGI.
- (3) In this Law "fidelity and surety insurance" means:
- (a) insurance guaranteeing the fidelity of persons holding positions of public or private trust; insurance indemnifying banks, savings bodies, brokers and other financial institutions against loss of money, securities, negotiable instruments, other specified valuable papers and tangible items of personal property, caused by theft, misplacement, destruction or other stated perils, including loss while being transported in an armoured motor vehicle or by messenger; and insurance for loss caused by the forgery of signatures on, or alteration of, specified documents and valuable papers;
  - (b) insurance against losses which financial institutions become legally obliged to pay by reason of loss of customers' property from safe deposit boxes;
  - (c) any bond (including a bid, payment or maintenance bond or a performance bond) guaranteeing the execution of any contract other than a contract of indebtedness or other monetary obligation;

- (d) any indemnity bond for the benefit of a public body, railway or charitable organisation, and any lost security or utility payment bond;
- (e) a surety bond or contract guaranteeing the performance of any lawful contract not specifically provided for in this paragraph, except a contract which itself falls within the definition of financial guarantee insurance in subsection (1);
- (f) a surety bond or contract guaranteeing the performance of, bonds and undertakings required or permitted in judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts;

and "**fidelity insurance**" has the meaning given in paragraphs (a) and (b) of this subsection.

(4) In this Law "**credit insurance**" means insurance:

- (a) indemnifying merchants or other persons extending credit against loss or damage resulting from non-payment of debts owed to them, for goods and services provided in the normal course of their business, including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to the insured;
- (b) indemnifying any person for expenses disbursed or to be disbursed under a contract in connection with the cancellation of a social event; or
- (c) indemnifying any person for tuition expenses disbursed or to be disbursed under a contract in connection with his dismissal or withdrawal from an educational institution; or

indemnifying a school providing education in consideration of tuition charges or fees against loss or damage in the event of non-payment of the tuition charges or fees of a student or pupil dismissed, withdrawn or leaving before the end of the school year for which the insurance is written.

(5) In this Law "**credit unemployment insurance**" means insurance on a debtor in connection with a specified loan or other credit transaction to provide payments to a creditor in the event of unemployment of the debtor for the instalments or other periodic payments becoming due while he is unemployed.

(6) In this Law "**residual value insurance**" means insurance against diminution in the anticipated and stated value of tangible personal property or real property or improvements thereto (except where due to physical damage) at the expiration of a lease or similar contract.

(7) For the purposes of this Law "**financial guarantee insurance business**" means the business of accepting financial guarantee insurance risks by effecting and carrying out contracts of financial guarantee insurance.

### General interpretation

26. (1) In this Law

"**administration order**" and "**administrator**" have the meanings given by section 8(1);

"**Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(b);

"**the Companies Law**" means the Companies (Guernsey) Law, 1994(d);

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(d) Order in Council No. XXXIII of 1994.

**"Court"** means the Royal Court of Guernsey sitting as an Ordinary Court;

**"creditor"** does not include a person who is a creditor by virtue only of being a policyholder;

**"daily default fine"** means a fine of such amount, not exceeding level 2 on the uniform scale, as the Magistrate's Court may impose on convicting a person of an offence, in respect of each day on which the offence continues to be committed by that person, whether before or after the date of conviction;

**"designated FGI"** and **"FGI"** have the meaning given by section 1(2);

**"general representative"** means the general representative of an FGI appointed pursuant to any Ordinance made in relation to that FGI under this Law;

**"Guernsey"** means the Islands of Guernsey, Herm and Jethou;

**"Guernsey company"** means a company registered under the Companies Law;

**"interested parties"**, in relation to an FGI means

- (a) persons with whom the FGI has transacted financial guarantee insurance,
- (b) holders and beneficiaries of insurance policies issued by the FGI,
- (c) creditors of the FGI,

**"investment grade"**, in relation to an obligation, means that it or a parity obligation of the same issuer has been -



- (a) determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the Commission; or
- (b) identified in writing by such a rating agency to be of investment grade quality; or
- (c) otherwise recognised in writing as being of investment grade by the Commission.

"**this Law**" includes any Ordinance made under this Law and, unless the context otherwise requires, any subordinate legislation made or licence issued pursuant to any such Ordinance;

"**OECD**" has the meaning given by the Organisation for Economic Co-operation and Development (Guernsey and Alderney) Law, 1994(e);

"**property**", in relation to an FGI, includes all the FGI's assets of any description;

"**the Register**" means the register of companies kept by Her Majesty's Greffier and called "the Register of Companies Incorporated with Limited Liability";

"**security**" includes any bond, mortgage, lien, pledge, charge, hypothèque or security interest;

"**the States**" means the States of Guernsey.

(2) Where a meaning is given to a word or expression by this Law related words or expressions have corresponding meanings.

(3) Unless the context otherwise requires -

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(e) Order in Council No. XI of 1994.

- (a) a reference in this Law to any other enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment;
- (b) a reference in this Law to a provision by number and/or letter alone is to the provision so numbered and/or lettered in this Law;
- (c) a reference in a provision of this Law to a subsection or paragraph by number or letter alone is to the subsection or paragraph so numbered within that provision.

**Citation**

**27.** This Law may be cited as the Insurance Business (Financial Guarantee Insurance : Special Provisions) (Guernsey) Law, 1996.

## SCHEDULE

Section 13(1)(b)

### POWERS CONFERRED ON AN ADMINISTRATOR

1. Power to carry on the business of the FGI.
2. Power to take possession of, collect and get in the assets of the FGI.
3. Power to dispose of the property of the FGI by public auction or private contract.
4. Power to raise or borrow money and grant security therefor over the property of the FGI.
5. Power to appoint any professionally qualified person to assist him in the performance of his functions.
6. Power to bring or defend any action or other legal proceedings in the name and on behalf of the FGI.
7. Power to refer to arbitration any question affecting the FGI.
8. Power to effect and maintain insurances in respect of the business and property of the FGI.
9. Power to use the FGI's seal.
10. Power to execute any document in the name and on behalf of the FGI.
11. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the FGI.
12. Power to appoint and dismiss agents and employees.
13. Power to do all things necessary for the realisation of the assets of the FGI.
14. Power to make any payment necessary or incidental to the performance of his functions.
15. Power to grant or accept a surrender of a lease or tenancy of any of the property of the FGI, and to take a lease or tenancy of any property required or convenient for the business of the FGI.
16. Power to make any arrangement or compromise on behalf of the FGI.

17. Power to call up any uncalled capital of the FGI.
18. Power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the FGI and to receive dividends, and to accede to trust deeds for the creditors of any such person.
19. Power to do all other things incidental to the exercise of the foregoing powers.