

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending

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Ordres en Conseil Vol. XXX, p. 281; as amended by the: Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (Ordres en Conseil Vol. XXX, p. 243); Companies (Guernsey) Law, 1990 (Ordres en Conseil Vol. XXXII, p. 324); Banking Supervision (Bailiwick of Guernsey) Law, 1994 (No. XIII of 1994, Ordres en Conseil Vol. XXXV(1), p. 271); Limited Partnerships (Guernsey) Law, 1995 (No. XII of 1995, Ordres en Conseil Vol. XXXVI, p. 264); Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997 (No. II of 1997, Ordres en Conseil Vol. XXXVII, p. 24); Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002 (No. XVII of 2002, Ordres en Conseil Vol. XLII(1), p. 644); Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003 (No. XV of 2003, Ordres en Conseil Vol. XLIII(1), p. 440); Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003 (No. XXXII of 2003, Ordres en Conseil Vol. XLIII(2), p. 1086); Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. XVIII of 2008); Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010 (No. XX of 2010); Protection of Investors (Amendment) Ordinance, 1988 (Recueil d'Ordonnances Tome XXIV, p. 324); Protection of Investors (Amendment) Ordinance, 1994 (Recueil d'Ordonnances Tome XXVI, p. 333); Protection of Investors (Amendment) Ordinance, 1998 (No. X of 1998, Recueil d'Ordonnances Tome XXVIII, p. 51); Protection of Investors (Amendment No. 2) Ordinance, 1998 (No. XX of 1998, Recueil d'Ordonnances Tome XXVIII, p. 87); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008 (No. XXXI of 2008, Recueil d'Ordonnances Tome XXXIII, p. 136); Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 (No. XII of 2015); Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); Single Euro Payments Area (Guernsey) Ordinance, 2016 (No. II of 2016); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) (Amendment) Ordinance, 2016 (No. XXIX of 2016); Transfer of Funds (Alderney) Ordinance, 2017 (Alderney Ordinance No. III of 2017); Transfer of Funds (Guernsey) Ordinance, 2017 (No. XXVII of 2017); Transfer of Funds (Sark) Ordinance, 2017 (Sark Ordinance No. X of 2017); Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVI of 2018); Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018); Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010 (G.S.I. No. 83 of 2010); Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017 (G.S.I. No. 50 of 2017). See also the: Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Government of Alderney Law, 2004 (No. III of 2005); Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); Financial Services Commission (Fees) Regulations, 2020 (G.S.I. No. 121 of 2020). This Law has been repealed by the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (No. XVIII of 2021).

instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

REPEALED

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PROJET DE LOI

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

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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

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.

(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 under this Law to carry on that business –

(i) in the Bailiwick, and

(ii) in that country or territory, 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.

NOTES

In section 1, paragraph (a) of subsection (2) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(2), with effect from 11th August, 2003.

The following cases have referred to this Law:

Bordeaux Services (Guernsey) Limited et al v. The Guernsey Financial Services Commission (2016) (Unreported, Royal Court, 11th May) (Guernsey Judgment No 18/2016);

David John Merrien v. Cees Schrauwens (Chairman of the Guernsey Financial Services Commission) (2016) (Unreported, Royal Court, 9th June) (Guernsey Judgment No 23/2016);

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017);

Y v. Guernsey Financial Services Commission (2018) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 47/2018);

Guernsey Financial Services Commission v. Y [2019]GCA076

(Unreported, Court of Appeal, 17th June).

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,
- (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.

[Duty of Commission]

Commission to have regard to objectives.

2A. In carrying out its functions under this Law the Commission must have

regard to the objectives of –

- (a) protecting –
 - (i) investors,
 - (ii) the public, and
 - (iii) the reputation of the Bailiwick as a financial centre,
- (b) ensuring that markets for controlled investments are fair, efficient and transparent, and
- (c) reducing risks to the financial system in the Bailiwick.]

NOTE

Section 2A, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 3, with effect from 30th July, 2008.

Licences

Application for licence.

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

- (a) be made to [the Commission] in such form and manner as, subject to any rules made under section 14, [the Commission] 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 Commission] may require, and
- (g) be accompanied by such fee as may be prescribed.

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

(3) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (2) –

- (a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information or statement as the Commission may specify,
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement or report or anything in them.

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

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

(6) Before deciding whether or not to grant a licence the Commission shall, if the application contains a statement under subsection (1)(d) to the effect that the applicant proposes to carry on controlled investment business in or

from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the [Policy and Finance Committee] of the Chief Pleas of Sark.]

NOTES

In section 3,

the words "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

subsection (2) was substituted, and subsection (3), subsection (4), subsection (5) and subsection (6) were inserted, by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(3), with effect from 11th August, 2003;

the words "Policy and Finance Committee" in square brackets, wherever occurring, were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

The following Regulations have been made under section 3:

Investor Protection (Designated Countries and Territories) Regulations, 1989.

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

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 Commission] may –

(a) subject to subsections (2) and (3) of this section [and to

section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987], grant the application and issue a licence to the applicant, or

- (b) [subject to section 35 of this Law and to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987], refuse to grant the application and serve on the applicant notice in writing of its decision.

(2) ...

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

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

[(3A) For the avoidance of doubt, the powers conferred on the Court by subsection (3) are, except where express provision to the contrary is made by any enactment, subject to the provisions of Part XXVII of the Companies (Guernsey) Law, 2008^{**} ("protected cell companies").]

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

- (a) shall take into account such written guidance and shall act in accordance with such written directions as may be given by the Committee under section 7 of the

Financial Services Commission (Bailiwick of Guernsey) Law, 1987 in relation to controlled investment business, and

- (b) may take into account –
 - (i) the provisions of any code issued under section 41B, and
 - (ii) any matter to which it may have regard under section 6 when considering whether or not to cancel or suspend a licence.

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

NOTES

In section 4,

the words in the first pair of square brackets in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in square brackets in paragraph (a) of subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 26, with effect from 1st February, 1988;

the words in square brackets in paragraph (b) of subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 27, with effect from 1st February, 1988;

subsection (2) was repealed by the Protection of Investors (Bailiwick

of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(4), with effect from 11th August, 2003;

subsection (3) was substituted, the first subsection (4) was substituted, and the second subsection (4) was inserted, by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 4, with effect from 29th October, 2008;³

subsection (3A) was inserted by the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) (Amendment) Ordinance, 2016, section 1, with effect from 25th July, 2016.

The figure in square brackets shown, incorrectly, in the printed version of this section as "(4)" should read "(5)".

Imposition of conditions on licences.

5. (1) Subject to section 35, [the Commission] 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 Commission] 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 Commission] 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 [...] 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 Commission] 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,
- [(d) require the removal of any director, controller, manager, partner or employee of the licensee,

- (e) prohibit, restrict or impose limitations on the carrying on of controlled investment business, or any class or description of controlled investment business, in or from within any place, or any particular place, outside the Bailiwick –
 - (i) by the licensee itself,
 - (ii) by any undertaking established by the licensee (including, without limitation, any branch or subsidiary thereof), or
 - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association).]

[(3) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 4 or 6 when considering whether or not to grant an application for a licence or to cancel or suspend a licence.]

NOTES

In section 5,

the words in square brackets in subsection (1), in the first pair of square brackets in subsection (2)(b) and in square brackets in subsection (2)(c) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words omitted in the second pair of square brackets in subsection

(2)(b) were repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5(a), with effect from 29th October, 2008;

paragraph (d) and paragraph (e) of subsection (2) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(5), with effect from 11th August, 2003;

subsection (3) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5(b), with effect from 29th October, 2008.

Cancellation or suspension of licence.

6. Subject to section 35, [the Commission] 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 –

- (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 Commission] 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 Commission] 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.

NOTE

In section 6, and in paragraph (d) and paragraph (g) thereof, the words in square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

PART II

**AUTHORISATION [OR REGISTRATION] 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 or registered] 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 or registered] collective investment scheme of that class.

NOTES

In the heading to Part II, the words in square brackets were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6, with effect from 29th October, 2008.

In section 7, the words in square brackets were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008.

[Authorisation or registration of collective investment schemes.]

8. (1) A collective investment scheme may be declared by [the Commission] to be an [authorised or registered] collective investment scheme of a specified class.

(2) A person seeking a declaration that a scheme is an [authorised or registered] collective investment scheme shall –

- (a) make application to [the Commission] in such form and manner as, subject to any rules made under section 14, [the Commission] may require, containing or accompanied by such particulars, verified in such manner, as, subject to any such rules, [the Commission] may require, and accompanied by such fee as may be prescribed, and

- (b) pending determination of the application, furnish [the Commission] with such further information about the scheme concerned, verified in such manner as, subject to any such rules, [the Commission] may require.

(3) On an application being made to it under and in accordance with this section [the Commission] may –

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

(i) in the case of an application for authorisation, an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class,

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

(b) [subject to section 35 of this Law and to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987], refuse to grant the application and serve on the applicant notice in writing of its decision.

(4) The requirements for an [authorised or registered] 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 or registration] under this section shall state

—

- (a) the name of the [authorised or registered] collective investment scheme,
- (b) the name of the designated manager of the scheme for the purposes of this Law,
- (c) [in the case of an authorised or registered open-ended collective investment scheme,] 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 or registered] collective investment scheme which the scheme is declared to be.

NOTES

In section 8,

the marginal note was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 9(a), with effect from 29th October, 2008;

the words in the first pair of square brackets in subsection (1), in square brackets in subsection (2)(a) and subsection (2)(b) and in the first pair of square brackets in subsection (3) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets in subsection (1), in the first pair of square brackets in subsection (2), in the first pair of square brackets in subsection (4), and in the square brackets in paragraph (a) and paragraph (d) of subsection (5), were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008;

paragraph (a) of subsection (3) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 9(b), with effect from 29th October, 2008;⁴

the words in square brackets in paragraph (b) of subsection (3) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 27, with effect from 1st February, 1988;

the words in the first pair of square brackets in subsection (5) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 29th October, 2008;

the words in square brackets in paragraph (c) of subsection (5) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 9(c), with effect from 29th October, 2008.

[Imposition of conditions on authorisations or registrations.]

9. (1) Subject to section 35, [the Commission] may at any time on or after issuing [an authorisation or registration] under section 8, by notice in writing served on the designated manager of an [authorised or registered] collective investment scheme, impose such conditions as appear to [the Commission] 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 or registered] 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.

NOTES

In section 9,

the marginal note thereto was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 10, with effect from 29th October, 2008;

the words in the first and fourth pairs of square brackets in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 29th October, 2008;

the words in the third pair of square brackets in subsection (1) and in square brackets in subsection (2) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008.

Avoidance of exclusion clauses.

10. Any provision of an [authorised or registered] 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.

NOTE

In section 10, the words in square brackets were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008.

[Revocation or suspension of authorisation or registration.]

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

- (a) at the request of the designated manager [or, in the case of an authorised or registered open-ended collective investment scheme], trustee or custodian of the scheme,
- (b) if it appears to [the Commission] that the scheme no longer fulfils the requirements set out in Schedule 3,
- (c) if the designated manager [or, in the case of an authorised or registered open-ended collective investment scheme], 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 Commission] considers it desirable to revoke or suspend the authorisation [or registration] 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 or registration].

NOTES

In section 11,

the marginal note thereto was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11(a), with effect from 29th October, 2008;

the words in the first pair of square brackets, in square brackets in paragraph (b) and in the first pair of square brackets in paragraph (d) thereof, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008;

the words in the third and fourth pairs of square brackets, and in square brackets in paragraph (e) thereof, were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 29th October, 2008;

the words in square brackets in paragraph (a) and paragraph (c) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11(b), with effect from 29th October, 2008;

the words in the second pair of square brackets in paragraph (d) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11(c), with effect from 29th October, 2008.

PART III

CONDUCT OF CONTROLLED INVESTMENT BUSINESS

Investment business rules

Rules under Part III.

12. (1) [The Commission] may make rules in relation to the carrying on of controlled investment business by licensees and in relation to [authorised or registered] 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 [both authorised and registered collective investment schemes or to either of such schemes, 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.

NOTES

In section 12,

the words in the first pair of square brackets in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008;

the words in square brackets in paragraph (a) of subsection (3) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 12, with effect from 29th October, 2008.

The following Rules have been made under section 12:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;

Collective Investment Schemes (Designated Persons) Rules, 1988;

Collective Investment Schemes (Class B) Rules, 1990;

Collective Investment Schemes Rules, 1988 (Amendment) Rules, 1996;

Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;

Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998;

Investment Exchange (Notification) Rules, 1998;

Collective Investment Schemes (Class A) Rules, 2002;

Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;

Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;

Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;

Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;

Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;

Collective Investment Schemes (Qualifying Professional Investor

Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Collective Investment Schemes (Compensation of Investors) Rules,
1988 (Amendment) Rules, 2008;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Authorised Closed-ended investment schemes Rules, 2008;
Licensees (Conduct of Business) Rules, 2009;
Licensees (Capital Adequacy) Rules, 2010;
AIFMD (Marketing) Rules, 2013;
Authorised Collective Investment Schemes (Class B) Rules, 2013;
AIFMD Rules, 2013;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules,
2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules,
2015;
Registered Collective Investment Schemes (Revocation and
Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules,
2017;
Guernsey Green Fund Rules, 2018;
Guernsey Green Fund (Amendment) Rules, 2018;
Prospectus Rules, 2018;
Registered Collective Investment Scheme Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules,
2019;
Guernsey Green Fund (Amendment) Rules, 2021;
Licensees (Conduct of Business and Notification) (Non-Guernsey
Schemes) (Revocation) Rules, 2021;
PIF Rules, 2021.

Making, publication and proof of rules.

13. (1) Before making any rules under this Part of this Law [the Commission] 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 Commission] considers best calculated to bring them to the attention of persons likely to be affected by the rules [and the public in general], and shall [consider] any representations made to [the Commission] concerning those proposals.

(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 Commission] 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 Commission] to cause a copy of the instrument containing it to be endorsed with a certificate, signed by an officer of [the Commission] duly authorised in that behalf, stating –

- (a) that the instrument was made by [the Commission], 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.

NOTES

In section 13,

the words in the first, second and fifth pairs of square brackets in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions

and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the third and fourth pairs of square brackets in subsection (1) were, respectively, inserted and substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, respectively section 1(6)(a) and section 1(6)(b), with effect from 11th August, 2003;

the words in square brackets in subsection (2)(b), subsection (3) and subsection (3)(a) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

[Licensing, authorisation and registration rules.]

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

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

(a) prescribe the information to be furnished by an applicant for a licence[, authorisation or registration], and the manner in which that information is to be verified,

(b) prescribe the form and content of licences[, authorisations and registrations],

(c) make provision as to the renewal of licences[, authorisations and registrations] 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[, authorisation or registration],
- (e) make provision as to the maintenance and publication of lists of licensees and of [authorised or registered] collective investment schemes, and prescribe the details to be recorded in any such list.

NOTES

In section 14,

the marginal note thereto was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 14(a), with effect from 29th October, 2008;

the words in square brackets in subsection (1), and in paragraph (b) and paragraph (c) of subsection (2), were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 14(b), with effect from 29th October, 2008;

the words in square brackets in paragraph (a) and paragraph (d) of subsection (2) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 13, with effect from 29th October, 2008;

the words in square brackets in paragraph (e) of subsection (2) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008.

The following Regulations have been made under section 14:

Investor Protection (Designated Countries and Territories) Regulations, 1989.

The following Rules have been made under section 14:

*Collective Investment Schemes (Designated Persons) Rules, 1988;
Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;*

Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Authorised Closed-ended investment schemes Rules, 2008;
Licensees (Conduct of Business) Rules, 2009;
AIFMD (Marketing) Rules, 2013;
Authorised Collective Investment Schemes (Class B) Rules, 2013;
AIFMD Rules, 2013;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund Rules, 2018;
Guernsey Green Fund (Amendment) Rules, 2018;
Prospectus Rules, 2018;
Registered Collective Investment Scheme Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021;
PIF Rules, 2021.

Accounting and financial rules.

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

(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 Commission] 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.

NOTES

In section 15, the words in square brackets in paragraph (b) of subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

The following Rules have been made under section 15:

*Collective Investment Schemes (Designated Persons) Rules, 1988;
Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;
Licensees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;*

Investment Exchange (Notification) Rules, 1998 (Amendment) Rules, 2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Authorised Closed-ended investment schemes Rules, 2008;
Licensees (Conduct of Business) Rules, 2009;
Licensees (Capital Adequacy) Rules, 2010;
AIFMD (Marketing) Rules, 2013;
Authorised Collective Investment Schemes (Class B) Rules, 2013;
AIFMD Rules, 2013;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules, 2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules, 2017;
Guernsey Green Fund Rules, 2018;
Guernsey Green Fund (Amendment) Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
Guernsey Green Fund (Amendment) Rules, 2021.

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 Commission], or
 - (iii) in relation to persons of a specified description or persons other than those of a specified description,
- [(aa) prescribe the manner in which licensees must conduct, govern, manage and operate their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of client assets, financial resources, the calculation of technical provisions and capital requirements),]
- (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 Commission], 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.

NOTES

In section 16,

the words "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

paragraph (aa) of subsection (2) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010, section 2, with effect from 8th November, 2010.

The following Rules have been made under section 16:

*Collective Investment Schemes (Designated Persons) Rules, 1988;
Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes Rules, 1988 (Amendment) Rules,
1996;
Collective Investment Schemes (Qualifying Professional Investor
Funds) (Class Q) Rules 1998;
Licensees (Financial Resources, Notification, Conduct of Business*

and Compliance) Rules, 1998;
Investment Exchange (Notification) Rules, 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Investment Exchange (Notification) Rules, 1998 (Amendment) Rules,
2002;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment)
Rules, 2003;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment)
Rules, 2004;
Collective Investment Schemes (Qualifying Professional Investor
Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Authorised Closed-ended investment schemes Rules, 2008;
Licensees (Conduct of Business) Rules, 2009;
Licensees (Capital Adequacy) Rules, 2010;
AIFMD (Marketing) Rules, 2013;
Authorised Collective Investment Schemes (Class B) Rules, 2013;
AIFMD Rules, 2013;
Licensees (Conduct of Business) Rules, 2009 (Amendment) Rules,
2014;
Licensees (Conduct of Business) Rules, 2014 (Amendment) Rules,
2015;
Registered Collective Investment Schemes (Revocation and
Amendment) Rules, 2015;
Licensees (Conduct of Business) Rules, 2016;
Licensees (Conduct of Business) Rules, 2016 (Amendment) Rules,
2017;
Guernsey Green Fund Rules, 2018;
Guernsey Green Fund (Amendment) Rules, 2018;
Prospectus Rules, 2018;
Registered Collective Investment Scheme Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules,
2019;
Guernsey Financial Services Commission Cyber Security Rules,
2021;
Guernsey Green Fund (Amendment) Rules, 2021;
Licensees (Conduct of Business and Notification) (Non-Guernsey
Schemes) (Revocation) Rules, 2021;
PIF Rules, 2021.

Power to adapt rules under sections 14 to 16.

17. (1) Subject to subsection (2), [the Commission] 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 Commission] shall not exercise the powers conferred by subsection (1) in any case unless it appears to [the Commission] 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.

NOTES

In section 17, the words in square brackets in subsection (1) and subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

The following Rules have been made under section 17:

Authorised Collective Investment Schemes (Class B) Rules, 2013.

Promotion rules.

18. (1) Rules may prohibit, restrict or control the promotion of any controlled investment [by any person], 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 Commission],
 - (iv) make special provision concerning the submission to [the Commission], 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 [or any other person] from promoting any category or description of controlled investment to

the public,

- (c) restrict the circumstances and manner in which a licensee [or any other person] may promote any category or description of controlled investment to the public or to any description of persons.

NOTES

In section 18,

the words in square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 15(a), with effect from 29th October, 2008;

the words in square brackets in sub-paragraphs (iii) and (iv) of paragraph (a) of subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in square brackets in paragraph (b) and paragraph (c) of subsection (2) were inserted. by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 15(b) and section 15(c), with effect from 29th October, 2008.

The following Rules have been made under section 18:

*Collective Investment Schemes (Class B) Rules, 1990;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;
Collective Investment Schemes (Class A) Rules, 2002;
Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
Authorised Collective Investment Schemes (Class A) Rules, 2008;
Authorised Closed-ended investment schemes Rules, 2008;
AIFMD (Marketing) Rules, 2013;
Authorised Collective Investment Schemes (Class B) Rules, 2013;
Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
Guernsey Green Fund Rules, 2018;*

Guernsey Green Fund (Amendment) Rules, 2018;
Prospectus Rules, 2018;
Registered Collective Investment Scheme Rules, 2018;
Financial Services Commission (UK/EU Exit) (Amendments) Rules,
2019;
Guernsey Green Fund (Amendment) Rules, 2021;
PIF Rules, 2021.

Indemnity and compensation 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 Commission] to establish, maintain and administer a fund or funds, or specify circumstances in which [the Commission] may do so,
- (b) authorise [the Commission] 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 Commission] 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 Commission] 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 Commission] to determine the amount which the rules require to be paid to [the Commission] or an insurer, subject to such limits or in accordance with such provisions as may be specified in the rules,
- [(g)] empower [the Commission] to take such steps as [the Commission] 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 Commission] or an insurer in satisfaction of claims against a licensee, proceedings may be taken against

that licensee by [the Commission] or the insurer.

NOTES

In section 19, the words in square brackets in subsection (2)(a), subsection (2)(b), subsection (3)(b), subsection (3)(c), subsection (3)(e), subsection (3)(g) and subsection (3)(f) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

The following Rules have been made under section 19:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;

Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;

Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;

Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2008.

The letters in square brackets in subsection (3) shown, incorrectly, in the printed version of this section as "(g)" and "(f)" should read "(f)" and "(g)".

[Authorised or registered collective investment scheme rules.]

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 or registered] collective investment schemes as they apply to any other category of controlled investment) make provision as to the constitution, conduct and dissolution of [authorised or registered] collective investment schemes, the functions of their designated managers, [the rights of investors in such schemes and, in the case of authorised and registered open-ended collective investment schemes, the functions of their designated trustees and custodians.]

(2) Rules may specify (by the use of a number, a letter, a title or otherwise) different classes of [authorised or registered] 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 or registered] 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 Commission] 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.

NOTES

In section 20,

the marginal note thereto was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 16(a), with effect from 29th October, 2008;

the words in the first and second pairs of square brackets in subsection (1), in square brackets in subsection (2) and in square brackets in paragraph (a) of subsection (3) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(a), with effect from 29th October, 2008;

the words in the third pair of square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 16(b), with effect from 29th October, 2008;

the words in square brackets in paragraph (f) of subsection (3) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

The following Rules have been made under section 20:

Collective Investment Schemes (Compensation of Investors) Rules, 1988;

Collective Investment Schemes (Class B) Rules, 1990;

Collective Investment Schemes Rules, 1988 (Amendment) Rules,

1996;
 Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998;
 Collective Investment Schemes (Class A) Rules, 2002;
 Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2002;
 Collective Investment Schemes (Class A) Rules, 2002 (Amendment) Rules, 2003;
 Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2004;
 Collective Investment Schemes (Class B) Rules, 1990 (Amendment) Rules, 2004;
 Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998 (Amendment) Rules, 2004;
 Collective Investment Schemes (Compensation of Investors) Rules, 1988 (Amendment) Rules, 2008;
 Authorised Collective Investment Schemes (Class A) Rules, 2008;
 Authorised Closed-ended investment schemes Rules, 2008;
 AIFMD (Marketing) Rules, 2013;
 Authorised Collective Investment Schemes (Class B) Rules, 2013;
 AIFMD Rules, 2013;
 Registered Collective Investment Schemes (Revocation and Amendment) Rules, 2015;
 Guernsey Green Fund Rules, 2018;
 Guernsey Green Fund (Amendment) Rules, 2018;
 Financial Services Commission (UK/EU Exit) (Amendments) Rules, 2019;
 Guernsey Green Fund (Amendment) Rules, 2021.

Investment business regulations

Regulations under Part III.

21. (1) The Committee may make regulations concerning controlled investment business.

(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.

NOTE

The following Regulations have been made under section 21:

Investor Protection (Designated Countries and Territories) Regulations, 1989;
Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992;
Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015;
Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017;
Financial Services Commission (Fees) (Amendment) Regulations, 2018;
Financial Services Commission (Fees) Regulations, 2020;
Protection of Investors (Fees) (Amendment) Regulations, 2021.

Fees regulations.

22. (1) Regulations may prescribe fees to be payable to [the Commission] –

- (a) in respect of any application for a licence[, authorisation or registration],
- (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 or registered] 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.

[(4) Notwithstanding the provisions of section 21(1), regulations under this section shall be made by [the States of Guernsey [Policy & Resources Committee]] after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark.]

NOTES

In section 22,

the words in the first pair of square brackets in subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in, first, paragraph (a) and, second, paragraph (c) of subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 13 and section 7(a), with effect from 29th October, 2008;

subsection (4) was inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002, section 2(3), with effect from 1st November, 2002;

the words "the States of Guernsey" in square brackets in subsection (4) were substituted by the Guernsey Financial Services Commission

(Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 2(a), with effect from 1st May, 2015;

the words in square brackets within the square brackets in subsection (4) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (4) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.⁵

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister under this section relating to the enactment of regulations or orders which prescribe or specify fees or charges payable to the Guernsey Financial Services Commission and ancillary matters were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁶

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁷

The following Regulations have been made under section 22:

Investor Protection (Designated Countries and Territories) Regulations, 1989;

Financial Services Commission (Fees) (Amendment) Regulations, 2018;

Financial Services Commission (Fees) Regulations, 2020;

Protection of Investors (Fees) (Amendment) Regulations, 2021.

[Regulations limiting validity of licences, authorisations or registrations.]

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

NOTE

In section 23, the marginal note thereto was substituted, and the words in square brackets therein were inserted, by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 17(a) and section 17(b), with effect from 29th October, 2008.

Exemption regulations.

24. Regulations may –

- (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 production 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 Commission] may require a licensee or a relevant person

- (a) to attend before [the Commission], or before a person duly appointed by [the Commission] in that behalf (an **"appointed person"**) at a [...] time and place [specified by the Commission or appointed person], and to answer questions and otherwise furnish information appearing to [the Commission] 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 [or to the investigation of, or to any proceedings in respect of, an offence or suspected offence under this Law],
- [(b) to furnish the Commission or an appointed person, on any occasion or at times or intervals specified by the Commission, or appointed person, with such information as the Commission or the appointed person may reasonably require about any matter specified by the Commission, or appointed person, relating to any controlled investment business, or to any offence or

suspected offence under this Law, being, if the Commission or the appointed person so requires, information verified in such manner as the Commission or appointed person may reasonably specify.]

(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 Commission] may specify.

(4) [The Commission] may –

- (a) require a licensee or a relevant person to produce, at such time and place as [the Commission] may specify, such books or papers relating to a controlled investment, or to any controlled investment business, [or to any offence or suspected offence under this Law,] as [the Commission] 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,
[or to any offence or suspected offence under this Law,]
which that appointed person may reasonably specify.

(5) Where by virtue of subsection (4) [the Commission] or an appointed person has power to require the production of any books or papers from a licensee or a relevant person, [the Commission] or that appointed person shall have the like power to require production of those books or papers from any person who appears to [the Commission] 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 response to a requirement imposed by or under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under section 38(2)(c) or 38(6),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

[(7A) ...]

(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.

[(9) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon

the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.]

[(10) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

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

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

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

NOTES

In section 27,

the words "the Commission" (or "The Commission") in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words omitted in the third pair of square brackets in paragraph (a) of subsection (2) were repealed, and the words in the fourth pair of square brackets therein were inserted, by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18(a)(i), with effect from 29th October, 2008;

the words in the sixth pair of square brackets in paragraph (a) of

subsection (2) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(3), with effect from 11th August, 2003;

paragraph (b) of subsection (2) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18(a)(ii), with effect from 29th October, 2008;⁸

the words in the second pair of square brackets in paragraph (a) of subsection (4) and in square brackets in paragraph (b) of subsection (4) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(4), with effect from 11th August, 2003;

subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;⁹

subsection (7A) (which was originally inserted by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, section 1(2), with effect from 29th October, 2008) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;

subsection (9) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(5), with effect from 11th August, 2003;

subsection (10), subsection (11) and subsection (12) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(7), with effect from 11th August, 2003;

subsection (13) was inserted, by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18(c), with effect from 29th October, 2008;

The word in square brackets in paragraph (a) of subsection (3) shown, incorrectly, in the printed version of this section as "of" should read "or".

[Communications by auditors to Commission.]

27A. (1) This section applies to any matter of which a person becomes aware in his capacity as auditor and which relates to the business or affairs of –

- (a) a licensee, or
- (b) an [authorised or registered] collective investment

scheme, or

- (c) a client who appears to be carrying on controlled investment business.

(2) It is the duty of any person acting as an auditor to communicate to the Commission matters to which this section applies and which the auditor has reasonable cause to believe is, or is likely to be, of material significance for determining either –

- (a) whether a person is a fit and proper person to carry on controlled investment business, or
- (b) whether the Commission should exercise its powers under this Law in order to protect investors from a significant risk of loss.

(3) No other duty to which an auditor may be subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(4) The provisions of this section also apply in relation to former licensees and formerly [authorised or registered] collective investment schemes.]

NOTES

Section 27A was inserted by the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997, section 1, with effect from 4th March, 1997.

In section 27A, the words in square brackets were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007,

section 7(a), with effect from 29th October, 2008.

[Enforcement.]

27B. If it appears to the Commission that an auditor has failed to comply with a duty imposed on him by section 27A(2), the Commission may report the auditor to any authority, institution or professional body to whose rules or requirements that auditor is subject, and may disclose any information with a view to the institution of disciplinary proceedings, or otherwise for the purposes of such proceedings.]

NOTE

Section 27B was inserted by the Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997, section 1, with effect from 4th March, 1997.

[Notification of change of director, etc.]

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

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

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

(4) A licensee who fails to give notice in accordance with this

section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.]

NOTE

Section 27C was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(8), with effect from 11th August, 2003.

[Notification of acquisition of significant shareholding.]

27D. (1) A person who becomes a significant shareholder in relation to a licensee which is a company shall, within a period of 14 days immediately following the day of that event, give notice in writing of the event to the Commission.

(2) For the purposes of this Law a "**significant shareholder**", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5 per cent or more but less than 15 per cent of the voting power in general meeting of that company or of any other company of which that company is a subsidiary.

(3) A person who fails to give notice in accordance with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale unless he shows that he was not aware that the facts were such as to require the giving of such notice; but in such a case he shall be guilty of the offence if he fails to give such notice within a period of 14 days immediately following the day upon which he becomes so aware.]

NOTE

Section 27D was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(8), with effect from 11th August, 2003.

Investigations by inspectors.

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

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

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

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

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

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any company –

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

or has at any relevant time been a controller (where the licensee is a partnership).

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

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

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

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

- (6) A person who without reasonable excuse –
 - (a) fails to comply with any provision of subsection (4), or
 - (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred by this section,

is guilty of an offence and is liable –

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

[(7) A statement made by a person in response to a requirement imposed by or under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
- (ii) in proceedings for –
 - (A) an offence under subsection (6) or section 38(2)(d),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

[(7A) ...]

(8) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of any client.

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

(10) A requirement imposed by or under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the

disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(11) Subject to the provisions of subsection (12), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the licensee the business, ownership or control of which is being investigated under subsection (1), and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that licensee as a civil debt.

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

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

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

(14) The provisions of this section apply in relation to a former licensee as they apply in relation to a licensee, but only in connection with the business, ownership or control of the former licensee at a time when he held a licence.]

NOTES

Section 27E was inserted by the Protection of Investors (Bailiwick of

Guernsey) (Amendment) Law, 2007, section 19, with effect from 30th July, 2008.

In section 27E,

subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010;¹⁰

subsection (7A) (which was originally inserted by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, section 2(2), with effect from 29th October, 2008) was repealed by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[Intervention, administration and winding up

Intervention and administration.

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

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

(b) prohibiting any such person or entity from –

(a) undertaking any business, or

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

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

particular –

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

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

NOTE

Section 28AA was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 29th October, 2008..

Winding up etc.

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 or registration] under section 8.

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

- (a) empower [the Commission] to [apply] 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 [apply] 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.

NOTES

In section 28,

the words in square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 29th October, 2008;

the words in the first pair of square brackets in paragraph (a) of subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions

and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the word in the second pair of square brackets in paragraph (a) of subsection (2), and the word in square brackets in paragraph (b) of subsection (2), were substituted by the Companies (Guernsey) Law, 1990, section 36, Schedule 2, with effect from 1st March, 1991.

[Objections to controllers, etc.]

Notification of and objection to controllers, etc.

28A. (1) No person shall become –

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

unless he has notified the Commission in writing of his intention to become such a director, controller or partner and the Commission has notified him in writing that there is no objection to his becoming such a director, controller or partner; and, for the purposes of this subsection, the Commission's written notification that there is no objection to a person becoming such a director, controller or partner shall be deemed to have been given on the expiration of a period of 60 days beginning on the date of compliance by that person with the requirements of this subsection and any other requirements imposed under subsection (2) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person.

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

(3) The Commission may serve a notice of objection under this

section if it is not satisfied –

- (a) that the person concerned is a fit and proper person to become a director or controller of the description in question, or a partner, of the licensee,
- (b) that the interests of clients of the licensee or relevant investors would not in any other manner be threatened by that person becoming a director or controller of that description or a partner (and in this paragraph a **"relevant investor"** is a person having any asset, right or interest (vested or contingent) in relation to a controlled investment in connection with which the licensee is carrying on a restricted activity), or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee as a director or controller of the description in question or as a partner –
 - (i) the criteria of Schedule 4 would continue to be fulfilled –
 - (A) in relation to that licensee, and
 - (B) in relation to any person who is or is to be a director, controller, partner, manager or employee of that licensee, or
 - (ii) if any of those criteria were not so fulfilled, that that person would be likely to undertake

remedial action.

- (4) A notice of objection under this section shall –
- (a) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied, and
 - (b) give particulars of the right of appeal conferred by section 36.]

NOTE

Section 28A, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(9), with effect from 11th August, 2003.

[Objection to existing controllers.]

- 28B.** (1) Where in the opinion of the Commission a person who is –
- (a) a director or controller of a licensee which is a company, or
 - (b) a partner of a licensee which is a partnership,

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

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

NOTE

Section 28B was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(9), with effect from 11th August, 2003.

[Contraventions by controllers.]

28C. (1) A person who –

- (a) becomes a director or controller or partner in contravention of section 28A(1), or
- (b) becomes or continues to be such a director, controller or partner after a notice of objection has been served on him under section 28A or 28B;

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

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

NOTE

Section 28C was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(9), with effect from 11th August, 2003.

[Restrictions on sale of shares.]

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

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

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of, or agreement to transfer, the right to be issued with them, shall be void,
- (b) no voting right shall be exercisable in respect of those shares,
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder, and
- (d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensee, whether in respect of capital or otherwise.

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

(4) No order shall be made under subsection (3) in a case where a notice of objection has been served under section 28A or 28B –

- (a) until the end of the period within which, under section 36, an appeal can be brought against the notice of objection, or
- (b) if such an appeal is brought within that period, until the appeal is dismissed or withdrawn.

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

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

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

(7) This section applies –

- (a) to all shares in the licensee of which the person in question is a controller of the relevant description which are held by him or any associate of his and which

were not so held immediately before he became such a controller of that licensee, and

- (b) in cases where the person in question became a controller of the relevant description of a licensee as a result of the acquisition by him or any associate of his of shares in another company, to all shares in that other company which are held by him or any associate of his and which were not so held before he became such a controller of that licensee.

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

(9) A notice served on the person concerned under subsection (2) shall give particulars of the right of appeal conferred by section 36; and any direction contained in the notice may be varied by a further direction or rescinded by the Commission by notice in writing to that person.

(10) In this section "**the Court**" –

- (a) where the person against whom the order under subsection (3) is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, means the Court of Alderney or, as the case may be, the Court of the Seneschal,
- (b) in any other case, means the Royal Court sitting as an Ordinary Court.]

NOTES

Section 28D was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(9), with effect from 11th August, 2003.

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

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 Commission] 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

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

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

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

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

NOTES

In section 29,

the words in square brackets in sub-paragraph (iv) of paragraph (c) of subsection (1) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

paragraph (cc) of subsection (1) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 21, with

effect from 29th October, 2008.

The following Regulations have been made under section 29:

Investor Protection (Designated Countries and Territories) Regulations, 1989;

Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992;

Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015;

Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017.

Extension of powers to obtain information.

30. The powers of [the Commission] under section 27 may be exercised in relation to –

- (a) an applicant for a licence, and
- (b) a person who appears to [the Commission] to be carrying on controlled investment business,

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

NOTE

In section 30 and in paragraph (b) thereof, the words in square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

Power to extend other requirements.

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.

PART V
MISCELLANEOUS AND SUPPLEMENTARY

Civil proceedings

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

32. (1) Subject to subsection (3), a controlled investment agreement –
- (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 sub-paragraph (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).

Injunctions and restitution orders.

33. (1) If on the application of [the Commission] the Ordinary Court is satisfied –

- (a) that there is a reasonable likelihood that a person will contravene any provision of [section 1, 7, 38A or 41A] of this Law or of any [directions,] 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 Commission] 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.

NOTES

In section 33,

the words in the first pair of square brackets in subsection (1) and in the square brackets in subsection (2) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the first pair of square brackets in paragraph (a) of subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(6), with effect from 11th August, 2003;

the word in the second pair of square brackets in paragraph (a) of subsection (1) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(10), with effect from 11th August, 2003.

Actions for damages.

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

(a) [directions,] rules or regulations made under this Law,
or

(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.

^a

Order in Council No. X of 1987.

NOTE

In section 34, the word in square brackets was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Disclosure of information]

Restrictions on disclosure of information.

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

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

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

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

NOTE

Section 34A, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

The following case has referred to section 34A:

David John Merrien v. Cees Schrauwes (Chairman of the Guernsey Financial Services Commission) (2016) (Unreported, Royal Court, 9th June) (Guernsey Judgment No 23/2016).

[Cases where disclosure is permitted.]

34B. Section 34A does not preclude –

- (a) the disclosure of –
 - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
 - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law,
- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions conferred by or under this Law or would otherwise be in the public interest,
- (d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or

valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,

- (e) the disclosure by the Commission of information in the interests of clients or investors or in the public interest,
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country or territory outside the Bailiwick to exercise its functions,
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any Ordinance, regulation or rule made under it,
- (h) the disclosure of information –
 - (i) for the purposes of the investigation, prevention or detection of crime, or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under this Law or otherwise,

- (i) the disclosure of information in connection with any

other proceedings arising out of this Law,

- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of a licensee or former licensee or by a person nominated or approved for the purposes of section 3(3)(a) [or appointed under section 27E],
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under section 27[, 27E] or 30 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by that section are exercisable,
- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (m) the disclosure of information to a person or body responsible for a scheme for compensating clients or investors (whether in the Bailiwick or elsewhere) –
 - (i) if it appears to the Commission that the disclosure would enable or assist the recipient of the information or the Commission to discharge

its functions, and

- (ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission, or
- (n) the disclosure of information by the Commission for the purposes or in the circumstances described in section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended from time to time.]

NOTES

Section 34B was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

In section 34B, the words in square brackets in paragraph (j) and paragraph (k) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 22(a) and section 22(b), with effect from 30th July, 2008.

The following case has referred to section 34B:

David John Merrien v. Cees Schrauwens (Chairman of the Guernsey Financial Services Commission) (2016) (Unreported, Royal Court, 9th June) (Guernsey Judgment No 23/2016).

Information supplied to Commission by relevant overseas authority.

34C. (1) Section 34A applies also in relation to information supplied to the Commission for the purposes of its functions conferred by or under this Law by a relevant supervisory authority in a country or territory outside the Bailiwick.

- (2) Information described in subsection (1) may be disclosed only

- (a) with the consent of the persons whose consent is referred to in section 34A(1),
- (b) for the purposes or in the circumstances described in section 34B(a), (b) or (h), or
- (c) with the consent of the relevant supervisory authority by which the information was supplied, for the purposes or in the circumstances described in any other paragraph of section 34B.]

NOTE

Section 34C was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

[Information & educational material

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

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

- (a) controlled investments and other classes or descriptions of investments, and
- (b) the carrying on of controlled investment business.]

NOTE

Section 34D, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

[Prohibition orders]

Power to make prohibition orders.

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

(2) A prohibition order may relate to –

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

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

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

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

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

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

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

NOTES

Section 34E, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.¹¹

The following cases have referred to section 34E:

Bordeaux Services (Guernsey) Limited et al v. The Guernsey Financial Services Commission (2016) (Unreported, Royal Court, 11th May) (Guernsey Judgment No 18/2016);

Y v. Guernsey Financial Services Commission (2018) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 47/2018);

Guernsey Financial Services Commission v. Y [2019]GCA076 (Unreported, Court of Appeal, 17th June).

[List of prohibition orders.]

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

(2) The list referred to in subsection (1) shall specify the functions

or description of functions which the individual concerned is prohibited from performing.

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

(4) The Commission may publish –

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

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

NOTE

Section 34F was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

[Right to make representations as to prohibition orders.]

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

- (a) stating that the Commission is proposing to make a prohibition order against him,

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

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

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

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

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

this Law.]

NOTE

Section 34G was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(11), with effect from 11th August, 2003.

Representations and appeals

Representations concerning decisions of [Commission].

35. (1) This section and section 36 apply to any decision of [the Commission] –

- (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,
- [(ff) under section 27 to impose a requirement under subsection (2), (4) or (5) of that section (including, for the avoidance of doubt, a requirement imposed under those subsections pursuant to the operation of section 41I),
- (gg) under section 27E, to serve a notice under subsection (1) or (3) of that section,]
- [(g) under section 28A or 28B, to serve a notice of objection,
- (h) under section 28D(2), to give directions or to vary or rescind any direction so given,
- (i) under section 34E, to make a prohibition order prohibiting the performance of any function, any specified function or any specified description of function, or
- (j) to refuse to vary or revoke any such order under section 34E(5)].

[(2) Before taking any decision mentioned in subsection (1) the Commission shall serve on the person concerned a notice in writing –

- (a) stating that the Commission is proposing to take the decision,
- (b) stating the grounds for the proposed decision,
- (c) setting out particulars of any condition or direction proposed to be imposed, varied or rescinded,
- (d) stating that the person concerned may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine, and
- (e) giving particulars of the right of appeal which would be exercisable under section 36 if the Commission were to take the proposed decision,

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

(3) Where –

- (a) a ground for the proposed decision is that any criterion of Schedule 4 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) any proposed condition or direction requires the removal or replacement of any person as a director,

controller, partner, manager, employee, general representative, auditor or actuary,

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

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

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

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

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

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

NOTES

In section 35,

the words in square brackets in the marginal note thereto, and in subsection (1), were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

paragraph (ff) and paragraph (gg) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 23, with effect from 30th July, 2008;

paragraph (g), paragraph (h), paragraph (i) and paragraph (j) of subsection (1) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(12), with effect from 11th August, 2003;

subsection (2), subsection (3), subsection (4), subsection (5) and subsection (6) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 24, with effect from 30th July, 2008.

Appeals against decisions of [Commission].

36. (1) A person aggrieved by a decision of [the Commission] to which this section applies may appeal to the Ordinary Court against that decision on the grounds that[–

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.]

(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 Commission] on the person to whom the decision relates, and
- (b) by a summons served on the [Chairman] of [the Commission] 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 Commission] 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 Court may –

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

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

(5) On an appeal under this section against a decision described in section 35(1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition or direction in question, or the variation or rescission thereof, pending the determination of the appeal.]

(6) ...

(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.

NOTE

In section 36,

the words "Commission" and "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets in subsection (1) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25(a), with effect from 30th July, 2008;

the word in the first pair of square brackets in paragraph (b) of subsection (2) was substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 29, with effect from 1st February, 1988;

subsection (4) and subsection (5) were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25(b), with effect from 30th July, 2008;

subsection (6) was repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25(c), with effect from 30th

July, 2008.

The following cases have referred to section 36:

Bordeaux Services (Guernsey) Limited et al v. The Guernsey Financial Services Commission (2016) (Unreported, Royal Court, 11th May) (Guernsey Judgment No 18/2016);

David John Merrien v. Cees Schrauwens (Chairman of the Guernsey Financial Services Commission) (2016) (Unreported, Royal Court, 9th June) (Guernsey Judgment No 23/2016);

Y v. Guernsey Financial Services Commission (2018) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 47/2018);

Guernsey Financial Services Commission v. Y [2019]GCA076 (Unreported, Court of Appeal, 17th June).

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 the Commission], 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 the Commission] 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.

NOTES

In section 37, the words "or the Commission" in square brackets, wherever occurring, were inserted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 30, with effect from 1st February, 1988.

The following Ordinances have been made under section 37:

Protection of Investors (Limitation of Liability) Ordinance, 1990;

Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) Ordinance, 2014;

Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017.

Criminal proceedings

Offences.

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.

(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

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

- (c) in purported compliance with a requirement under section 27, [or
- (d) in purported compliance with a requirement under section 27E,]

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) ...

(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.

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

NOTES

In section 38,

paragraph (bb) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 26, with effect from 29th October, 2008;

paragraph (d) of subsection (2), and the word immediately after paragraph (c) thereof, were inserted by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, section 3(1), with effect from 29th October, 2008;

subsection (4) was repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(7), with effect from 11th August, 2003;

subsection (6) was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(15), with effect from 11th August, 2003.

[Misleading statements and practices.]

38A. (1) This subsection applies to a person who –

(a) makes a statement, promise or forecast which he knows

to be misleading, false or deceptive in a material particular,

- (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise, or
- (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) –

- (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a controlled investment agreement, or
- (b) to exercise, or refrain from exercising, any rights conferred by a controlled investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any controlled investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those controlled investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those controlled investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it shall be a defence for him to show that the statement, promise or forecast was made in conformity with –

- (a) price stabilising rules made by the Commission, or
- (b) guidance issued by the Commission on the management of conflicts of interests.

(5) In proceedings brought against a person for an offence under subsection (3), it shall be a defence for him to show –

- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection,

- (b) that he acted or engaged in the conduct –

- (i) for the purpose of stabilising the price of controlled investments, and

- (ii) in conformity with –

- (A) price stabilising rules made by the Commission, or

- (B) such provisions corresponding to price stabilising rules, made by a body or

authority outside the Bailiwick, as may be applicable to the relevant market, taking into account the circumstances of the act or the course of conduct, or

- (c) that he acted or engaged in the conduct in conformity with guidance issued by the Commission on the management of conflicts of interests.
- (6) Subsections (1) and (2) do not apply unless –
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Bailiwick or arrangements are made in or from the Bailiwick for the statement, promise or forecast to be made or the facts to be concealed,
 - (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick, or
 - (c) the agreement is or would be entered into, or the rights are or would be exercised, in the Bailiwick.
- (7) Subsection (3) does not apply unless –
- (a) the act is done, or the course of conduct is engaged in, in the Bailiwick, or
 - (b) the false or misleading impression is created there.
- (8) In this Law "**price stabilising rules**" means rules made by the

Commission as to –

- (a) the circumstances and manner in which,
- (b) the conditions subject to which, and
- (c) the time when and the period during which,

action may be taken for the purpose of stabilising the price of controlled investments of specified kinds; and such rules –

- (i) may make different provision in relation to different kinds of controlled investment, and
- (ii) may be amended or repealed by subsequent such rules.

(9) The States may by Ordinance amend the provisions of this section.]

NOTE

Section 38A was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(8), with effect from 11th August, 2003.

[Penalties.]

39. A person guilty of an offence under section [34A(2),] 38 or 38A shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5

on the uniform scale, or to both,

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

NOTES

Section 39 was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(9), with effect from 11th August, 2003.

In section 39, the number in square brackets was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(16), with effect from 11th August, 2003.

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.

[Penalties For Market Abuse]

Market abuse.

41A. (1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) –

- (a) which occurs in relation to qualifying investments traded on a market to which this section applies,
- (b) which satisfies any one or more of the conditions set out in subsection (2), and
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.

(2) The conditions are that –

- (a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected,

- (b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question,
- (c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

(3) The Committee may by regulations prescribe (whether by name or by description) –

- (a) the markets to which this section applies, and
- (b) the investments which are qualifying investments in relation to those markets.

(4) The regulations may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs –

- (a) in the Bailiwick, or
- (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the Bailiwick or which is accessible electronically in the Bailiwick.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which

—

- (a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments, or
- (b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.

(7) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded for the purpose of this section as being generally available to them.

(8) Behaviour does not amount to market abuse —

(a) if it conforms with —

- (i) price stabilising rules made by the Commission, or
- (ii) guidance issued by the Commission on the management of conflicts of interests, and

(b) the rules or guidance include a provision to the effect that behaviour conforming with the rule or (as the case may be) the guidance does not amount to market abuse.

(9) Any reference in this Law to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.

(10) In this section –

"behaviour" includes action or inaction,

"investment" includes any asset, right or interest and is to be read with section 1(3)(b) and Schedule 1,

"regular user", in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.]

NOTES

Section 41A, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

The following Regulations have been made under section 41A:

Protection of Investors (Market Abuse) (Bailiwick of Guernsey) Regulations, 2008.

[The code.

41B. (1) The Commission may prepare and issue a code containing such provisions as the Commission considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

(2) The code may among other things specify –

- (a) descriptions of behaviour that, in the opinion of the Commission, amount to market abuse,
 - (b) descriptions of behaviour that, in the opinion of the Commission, do not amount to market abuse,
 - (c) factors that, in the opinion of the Commission, are to be taken into account in determining whether or not behaviour amounts to market abuse,
 - (d) an indication of the circumstances referred to in section 41F(4).
- (3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.
- (4) The Commission may at any time alter or replace the code.
- (5) If the code is altered or replaced, the altered or replacement code shall be issued by the Commission.
- (6) A code issued under this section shall be published by the Commission in the way appearing to the Commission to be best calculated to bring it to the attention of the public; and notice that the code has been issued shall be published by the Commission in La Gazette Officielle.
- (7) The Commission may charge a reasonable fee for providing a person with a copy of the code.]

NOTE

Section 41B was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Provisions included in code by reference to City Code on Takeovers and Mergers, etc.]

41C. (1) The Commission may include in a code issued by it under section 41B ("**the Commission's code**") provision to the effect that in its opinion behaviour conforming with the City Code or with any other code or guidance issued in relation to takeovers and mergers issued in any other jurisdiction –

- (a) does not amount to market abuse,
- (b) does not amount to market abuse in specified circumstances, or
- (c) does not amount to market abuse if engaged in by a specified description of person.

(2) If the Commission's code includes provision of a kind authorised by subsection (1), the Commission shall keep itself informed of the way in which –

- (a) in the case of the City Code, the Panel on Takeovers and Mergers,
- (b) in the case of a code or guidance issued in another jurisdiction, the body in that jurisdiction charged with the administration of that code or guidance,

interprets and administers the relevant provisions of the City Code or (as the case may

be) that code or guidance.

(3) In this section –

"City Code" means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers as it has effect at the time when the behaviour occurs, and

"specified" means specified in the Commission's code.]

NOTE

Section 41C was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Codes: procedure.]

41D. (1) Before issuing a code under section 41B, the Commission shall publish a draft of the proposed code in the way appearing to the Commission to be best calculated to bring it to the attention of the public; and notice that the draft of the code has been published shall be published by the Commission in La Gazette Officielle.

(2) The draft, and the notice of the publication thereof in La Gazette Officielle, shall be accompanied by a statement that representations about the proposal may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the notice.

(3) Before issuing the proposed code, the Commission shall have regard to any representations made to it in accordance with subsection (2).

(4) If the Commission issues the proposed code it shall publish an

account, in general terms, of –

- (a) the representations made to it in accordance with subsection (2), and
- (b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Commission, significant, the Commission shall (in addition to complying with subsection (4)) publish details of the difference.

(6) Subsections (1) to (5) do not apply if the Commission considers that there is an urgent need to publish the code; but in any such case –

- (a) the notice published by the Commission under section 41B(6) that the code has been issued shall be accompanied by a statement that representations about the code may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the notice, and
- (b) in default of publication by the Commission of such a statement as is required by paragraph (a) within a period of 28 days immediately after the date of the issue of the code, the code shall cease to have effect.

(7) The Commission may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(8) This section also applies to a proposal to alter or replace a

code.]

NOTE

Section 41D was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Effect of code.]

41E. (1) If a person behaves in a way which is described (in any code in force under section 41B at the time of the behaviour) as behaviour that, in the Commission's opinion, does not amount to market abuse, that behaviour of his is to be taken, for the purposes of this Law, as not amounting to market abuse.

(2) Otherwise, any code in force under section 41B at the time when particular behaviour occurs may be taken into account so far as it indicates whether or not that behaviour should be taken to amount to market abuse.]

NOTE

Section 41E was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Offences and penalties in cases of market abuse.]

41F. (1) Where a person ("A") –

- (a) is or has engaged in market abuse, or
- (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by A, would

amount to market abuse,

A shall, subject to the provisions of subsection (2), be guilty of an offence and liable

—

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

(2) It shall be a defence for the person 'A' to show that there are reasonable grounds for the court to be satisfied that —

- (a) A believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1), or
- (b) A took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).

(3) In determining what penalty should be imposed on a person convicted of an offence under subsection (1), the court may (without limitation) have regard to —

- (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in

question and, if it did, how serious that effect was,

- (b) the extent to which that behaviour was deliberate or reckless, and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(4) A code issued under section 41B may include an indication of the circumstances in which a person is to be regarded as –

- (a) having a reasonable belief that his behaviour did not amount to market abuse, or
- (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.]

NOTE

Section 41F was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Effect on transactions.]

41G. The conviction of a person of an offence under section 41F does not make any transaction void or unenforceable.]

NOTE

Section 41G was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Power to amend by Ordinance.]

41H. The States may by Ordinance amend the provisions of sections 41A to 41G.]

NOTE

Section 41H was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(10), with effect from 11th August, 2003.

[Assistance to relevant overseas authorities]

Investigations etc. in support of relevant overseas authority.

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

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

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

- (a) whether in the country or territory of the relevant overseas authority concerned, corresponding assistance would be given to the Commission,

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

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

(4) If in the exercise of its investigative powers the Commission has appointed any person in response to a request from a relevant overseas authority it may direct that person to permit a representative of that overseas authority to attend, and take part in, any interview conducted for the purposes of the investigation.

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

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

- (a) shall have effect, for the purposes of this section, as if references in that section to a licensee or a relevant person were references to a person involved, and
 - (b) where appropriate for the purposes of this section, may be exercised by a majority of the members of the Commission.
- (7) For the purposes of this section –
- (a) a "**person involved**" is a person –
 - (i) whom a relevant overseas authority reasonably suspects is, or has been, involved, or
 - (ii) who, as a result of enquiries made, or information received, during the course of any investigation under this section, appears to the Commission or the overseas authority to be involved, or have been involved,
- in market abuse, whether knowingly or otherwise,
- (b) for the avoidance of doubt, "**market abuse**" includes the offence of insider dealing under the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996.]

NOTE

Section 41I, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

[Financial penalties and offences]

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

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

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

(3) If the defaulter fails without reasonable excuse to comply with an order made under subsection (2), the Royal Court may impose a financial penalty upon the defaulter (and in the case of a body corporate, any director or officer) –

(a) of such amount, not exceeding £500,000, and

(b) to be paid within such period,

as the Court thinks fit.

(4) A financial penalty imposed under this section –

(a) is an obligation to pay the amount of the penalty to the States of Guernsey in accordance with the terms of the

relevant order of the Royal Court, and

- (b) may be recovered from the person liable to pay as a civil debt owed by that person to the States of Guernsey.]

NOTE

Section 41J, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

[Offences.]

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

- (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
- (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

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

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

–

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

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

is guilty of an offence.

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

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

NOTE

Section 41K was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

[Powers to investigate criminal offences]

Powers of investigation.

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

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

investigating the affairs, or any aspect of the affairs, of any person.

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

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

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

(i) take copies or extracts from them,

(ii) require the person producing them to provide an explanation of any of them,

(b) if any such documents are not produced, Her Majesty's Procureur may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

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

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

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

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

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

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

authorised to accompany the officer of police.

[(7) A statement by a person in response to a requirement imposed by virtue of this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under subsection (11),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(8) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to

disclose or produce on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

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

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

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

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

shall be guilty of an offence.

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

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

term not exceeding six months or to a fine not exceeding level 5 on the uniform scale, or to both.

(13) Where any person –

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

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

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

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

(15) In this section, "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form,

references to its production include references to producing a copy of the information in legible form.]

NOTES

Section 41L, and the heading thereto, were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

In section 41L, subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

[Disclosure.]

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

(2) Without prejudice to his power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information to or by him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

(3) Subject to subsection (1) and to any provision of an agreement for the supply of information which restricts the disclosure of the information

supplied, information obtained by Her Majesty's Procureur or any person duly authorised under section 41L(9) may be disclosed –

- (a) to any person or body for the purposes of any investigation of an offence or prosecution in the Bailiwick or elsewhere,
 - (b) to any competent authority, or
 - (c) to the [Director of the Revenue Service] of the States of Guernsey [Policy & Resources Committee].
- (4) The following are competent authorities for the purposes of subsection (3)(b) –
- (a) any person or body having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
 - (b) any person having under the law of any country or territory outside the Bailiwick functions corresponding to any of the functions mentioned in subparagraph (a), and
 - (c) any person appointed to investigate the affairs of a company in the Bailiwick or elsewhere.]

NOTES

Section 41M was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

In section 41M,

the words in the first pair of square brackets in paragraph (c) of subsection (3) were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;¹²

the words in the second pair of square brackets in paragraph (c) of subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.¹³

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.¹⁴

[Offences as to "tipping off".

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

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

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

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the

client, or

(b) to any person –

(i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

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

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

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

–

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

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

NOTE

Section 41N was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 30th July, 2008.

Supplementary

Service of notices and documents.

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

- (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).

NOTE

In section 42, the words in square brackets were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

[Power of States to amend Law by Ordinance.]

42A. [(1) The States may by Ordinance –

- (a) amend Part I or II or section 35, 36, 38 or 39, where it appears to the States to be necessary or expedient to do so for the purpose of –
 - (i) enabling the Commission more effectively to carry out any of its functions,
 - (ii) enhancing or protecting the reputation or economic interests of the Bailiwick,
 - (iii) improving or enhancing the investigation, prevention or detection of crime,
 - (iv) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
 - (v) facilitating the detection, seizure and forfeiture

of the proceeds of crime or assets intended for use in crime,

(vi) discharging any international obligation to which the Bailiwick is subject, or

(vii) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Commission, and

(b) make such additional provision as they think fit for the purposes of carrying this Law into effect.]

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

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

(a) [subject to subsection (3A),] create offences, and

(b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

[(3A) The power conferred by subsection (3)(a) to create offences does not include power –

(a) to provide for offences to be triable only on indictment,

- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.]

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

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

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

NOTES

Section 42A was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 28, with effect from 29th October, 2008.

In section 42A, subsection (1) was substituted, the words in paragraph (a) of subsection (3) were inserted, and subsection (3A) was inserted by the

Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, respectively section 4(2), section 4(3) and section 4(4), with effect from 29th October, 2008.

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,

["associate", in relation to any person, means –

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

"authorised collective investment scheme" means a collective

investment scheme declared in an authorisation issued by [the Commission] under section 8 to be an authorised collective investment scheme for the purposes of this Law; and **"authorisation"** [and related expressions] 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,

["chief executive", in relation to a company, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the company and, in relation to a company whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,]

^b Ordres en Conseil Vol. IV, p. 178.

^c Ordres en Conseil Vol. II, p. 451.

["**child**" includes a stepchild, an adopted child and an illegitimate child,]

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

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

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

"**collective investment scheme**" means any arrangement such as is identified and described in paragraph 1 of Schedule 1,

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

"**the Committee**" means the States [Policy & Resources Committee] or such other Committee or body as the States may specify by Ordinance,

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

"**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),

["controller", in relation to a company, means –

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller,]

"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 or registered] collective investment scheme, means the person designated as such by [the Commission] for the purposes of this Law,

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

["equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,]

"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 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, [1993]],

["indirect controller", in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any

^d Ordres en Conseil Vol. XVIII, p. 315.

controller of that company, is accustomed to act,]

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

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

"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

^f Ordre en Conseil No. XIII of 1986.

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,

"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,

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

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

"occupational pension scheme" has the meaning given in paragraph 1(4) of Schedule 1,

["officer of police" means a member of the salaried police force of the Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended and –

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

[...]

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

–

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

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

"the Ordinary Court" means the Royal Court sitting as an Ordinary Court [and for the purposes of this Law –

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

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

"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 Commission] to be situated 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 Commission] in any particular case or for any particular purpose,

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

"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,

["regulatory Laws" means –

- (a) the Banking Supervision (Bailiwick of Guernsey) Law,

[1987],

- (b) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (c) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (d) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- [(da) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,
- (db) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,]
- (e) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission,]

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

"relevant person" has the meaning given in section 27(1),

["relevant supervisory authority", in relation to a country or territory outside the Bailiwick, means an authority discharging in that place –

- (a) functions corresponding to any functions of the

Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended or under the regulatory Laws, or

- (b) such other functions as the Commission may by regulation prescribe,]

"restricted activity" has the meaning assigned by section 1(3)(c) and Schedule 2,

"specified class", in relation to an [authorised or registered] collective investment scheme, means a class specified by rules made under section 20(2),

"rules" means rules made under Part III of this Law,

["shareholder controller", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15 per cent or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,]

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

["subsidiary company" has the meaning given in Schedule 5, subject to any regulations under paragraph 5 of that Schedule; and **"subsidiary"** has the same meaning,]

"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, section, 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.

NOTES

In section 44,

the definitions of the expressions "associate", "chief executive", "child", "company", "controller", "director", "equity share capital", "indirect controller", "manager", "officer of police", "partnership", "regulatory

^g Ordres en Conseil Vol. XIII, p. 355.

Laws", "relevant supervisory authority", "shareholder controller" and "subsidiary company" in subsection (1) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(17), with effect from 11th August, 2003;

the words "the Commission" in square brackets, wherever occurring, were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words in the second pair of square brackets in the definition of the expression "authorised collective investment scheme" were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 29(b), with effect from 29th October, 2008;

the definitions of the expressions "closed-ended investment scheme", "inspector", "investment company", "open-ended investment scheme", "registered collective investment scheme" and "relevant overseas authority" in subsection (1) were inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 29(a), with effect from 29th October, 2008;

the definition of the expression "the Commission" in subsection (1) was inserted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 31, with effect from 1st February, 1988;

the words in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;¹⁵

the words "authorised or registered" in square brackets, wherever occurring, were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(b), with effect from 29th October, 2008;

the words in square brackets in the definition of the expression "group" in subsection (1) were substituted by the Banking Supervision (Bailiwick of Guernsey) Law, 1994, section 59(1), with effect from 1st October, 1994;

the words omitted in square brackets immediately before the definition of the expression "open-ended investment scheme" were repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 29(c), with effect from 29th October, 2008;

the words in square brackets in the definition of the expression "Ordinary Court" were inserted by the Protection of Investors (Bailiwick of

Guernsey) (Amendment) Law, 2007, section 29(d), with effect from 29th October, 2008;

paragraph (da) and paragraph (db) of the definition of the expression "regulatory Laws" in subsection (1) were inserted by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010, regulation 1(2), with effect from 3rd September, 2010.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.¹⁶

The following Regulations have been made under section 44:

Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée, 1908 has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée

(Alderney), 1894 has since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

The Insurance Business (Guernsey) Law, 1986 has since been repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002, subject to the savings in, first, section 102 of the 2002 Law and, second, section 78 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

The date in the square brackets within the square brackets in the definition of the expression "group" in subsection (1) shown, incorrectly, in the printed version of this section as "1993" should read "1994".

The date in square brackets in paragraph (a) of the expression "regulatory Laws" in subsection (1) shown, incorrectly, in the printed version of this section as "1987" should read "1994".

Savings and transitional provisions.

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.

(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 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 Commission] 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.

NOTE

In section 45, the words in square brackets in paragraph (b) of subsection (3) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

Citation.

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

Commencement.

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.

NOTE

The Law was brought into force on 1st February, 1988 by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Commencement) Ordinance, 1988, section 1(a), save for sections 1, 7, 29(1) and (2), 32, 33, 34 and 38(1), (3) and (4), and Schedules 1 and 2, brought into force on 1st April, 1988 by section 1(b) of the same Ordinance.

SCHEDULE 1
CONTROLLED INVESTMENTS

Section 1(3)(b)

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 property in question is managed as a whole by or on behalf of the person responsible for its management.]

(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 (Bailiwick 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,]
- [(j) an arrangement under which –

^h Ordres en Conseil Vol. XXV, pp. 28 and 518; Vol. XXVI, p. 225; No. V of 1983.

- (i) the units of investors consist of instruments which confer rights (other than options to purchase) in respect of only one issue, or
- (ii) each investor owns a part of the property and may withdraw it at any time, if the arrangement does not involve such pooling as is mentioned in sub-paragraph (1)(c)(i) and falls within sub-paragraph (1)(c)(ii) only because each investor's property is not separately bought and sold except when a person becomes, or cease to be, an investor,]

(k) ...

[(kk) ...]

- (l) a friendly society registered under an enactment relating to friendly societies and recognised by [the Commission] 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.

[Category 2 : General securities and derivatives]

2. (1) General securities and derivatives constitute controlled investments for the purposes of this Law; and for those purposes general securities and derivatives comprise

- (a) shares and stock in the share capital of a company other than an [...] investment company,
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging the indebtedness of a company or public sector body; but this item does not extend –
 - (i) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services,
 - (ii) to a cheque or other bill of exchange, a banker's draft or a letter of credit,
 - (iii) to a bank note, a bank statement, or (by reason of any financial obligation contained in it) to any lease or disposition of real property, to any bond or other security over real property, or to an insurance policy,
- [(c) without prejudice to the generality of item (a), shares in an investment company,]

- (d) warrants or other instruments entitling the holder to subscribe for investments falling within items (a), (b), or (c),
- (e) certificates or other instruments which confer proprietary, disposal, underwriting, conversion or acquisition rights in respect of investments falling within any of items (a) to (d),
- (f) options to acquire or dispose of:
 - (i) an investment falling within any other item of this subparagraph, or within this item, or
 - (ii) currency, or
 - (iii) gold, palladium, platinum or silver,
- (g) rights under a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers of banks and bureaux de change,
- (h) rights under a contract for differences, or under any other contract of which the purpose or pretended

purpose is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description, or in an index or other factor designated for that purpose in the contract, except where the parties intend that the profit be obtained, or the loss be avoided, by taking delivery of the property to which the contract relates,

- (i) rights to, and interests in, any of the foregoing investments.

- (2) In this paragraph,

[...]

[...]

"company" means any body (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body,

"public sector body" means any international, national or local government, governmental or other public body or organisation.]

NOTES

In paragraph 1 of Schedule 1,

sub-paragraph (1)(c)(ii), sub-paragraph (3)(i) and sub-paragraph (3)(j) were substituted by the Protection of Investors (Amendment) Ordinance, 1988, respectively section 1(a), section 1(b) and section 1(c), with effect from 25th May, 1988;

sub-paragraph (k) and sub-paragraph (kk) (which latter was originally inserted by the Protection of Investors (Amendment) Ordinance, 1988, section 1(d), with effect from 25th May, 1988) of paragraph (3) were

repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 30(a), with effect from 29th October, 2008;¹⁷

the words in square brackets in sub-paragraph (3)(l) were substituted by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law;

the words omitted in square brackets in sub-paragraph (4) were repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 30(b), with effect from 29th October, 2008;¹⁸

Paragraph 2 of Schedule 1 was inserted by the Protection of Investors (Amendment) Ordinance, 1998, section 1, with effect from 1st July, 1998.

In paragraph 2 of Schedule 1,

the words omitted in square brackets in paragraph (1)(a), and the words omitted in square brackets in paragraph (2), were repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 30(c) and section 30(e), with effect from 29th October, 2008;

paragraph (1)(c) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 30(d), with effect from 29th October, 2008.

SCHEDULE 2
RESTRICTED ACTIVITIES

Section 1(3)(c)

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[, borrowing, lending] or underwriting an investment,
 - (b) making arrangements for another person to buy, sell, subscribe for[, borrow, lend] 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 –

- (a) holding as trustee or custodian the assets underlying a collective investment scheme, within the meaning of category 1 in Schedule 1, or the evidence of title to those assets,
- (b) safeguarding assets belonging to others which comprise general securities and derivatives within the meaning of category 2 in Schedule 1, or the evidence of title to

such assets.]

[9. *Operating an investment exchange*, that is to say providing a facility, whether by electronic means or otherwise, for the orderly trading of securities, or for the listing of securities for the purpose of trading, by members of the investment exchange.]

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 itself controlled investment business is not a restricted activity if the activity is –

- (a) a part of other services provided in the course of that profession or business, and
- (b) undertaken without separate or additional remuneration, whether from the client concerned or from a third party.]

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.

[Note D : Overseas collective investment schemes - limited applicability of section 7

For the purposes of section 7 (though not for any other purpose) an activity carried on by a licensee in connection with a collective investment scheme incorporated or established under the law of a country or territory outside the Bailiwick is only a restricted activity if –

- (a) the scheme's manager is, or has delegated his duties to, a licensee, and
- (b) the scheme's custodian or trustee is, or has delegated his duties to, a licensee.]

NOTES

In Schedule 2,

the words in square brackets in paragraph (a) and paragraph (b) of Item 4 were inserted by the Protection of Investors (Amendment) Ordinance, 1998, respectively section 2(1)(a) and section 2(1)(b), with effect from 1st July, 1998;

Item 8 and Note B were substituted by the Protection of Investors (Amendment) Ordinance, 1998, respectively section 2(2) and section 3, with effect from 1st July, 1998;

Item 9 was inserted by the Protection of Investors (Amendment No. 2) Ordinance, 1998, section 1, with effect from 1st October, 1998;

Note D was substituted by the Protection of Investors (Amendment) Ordinance, 1994, section 1, with effect from 1st November, 1994.

SCHEDULE 3

Section 8(4)

[REQUIREMENTS FOR AUTHORISED OR REGISTERED COLLECTIVE
INVESTMENT SCHEMES]

1. The scheme must comply with all rules made under this Law applicable to the class of [authorised or registered] 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. [A scheme which is promoted or otherwise described as an open-ended investment 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 [a scheme which is promoted or otherwise described as an open-ended investment scheme] must each be a body corporate.

NOTES

In Schedule 3,

the heading thereto was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 31(a), with effect from 29th October, 2008;

the words in square brackets in paragraph 1 were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7(c), with effect from 29th October, 2008;

the words in square brackets in paragraph 4 and paragraph 5 were substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 31(b), with effect from 29th October, 2008.

MINIMUM CRITERIA FOR LICENSING

Fit and proper persons.

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

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

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of clients or investors (or potential clients or investors), the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position,
- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and

professional obligations to be assumed or undertaken,

(f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under –

(i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,

(ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

(iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

(v) the Disclosure (Bailiwick of Guernsey) Law, 2007,

(vi) the [Transfer of Funds (Guernsey) Ordinance, 2017], the [Transfer of Funds (Alderney) Ordinance, 2017] and the [Transfer of Funds (Sark) Ordinance, 2017],

[(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,]

[(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,

- (vic) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,]
- (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, and
- (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referred to in paragraph 2(2).

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

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

of doubt, rules, instructions and guidance issued by the Commission in relation thereto), or

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

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

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

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

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method

of conducting business or his suitability to carry on business regulated by this Law, or

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

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

- (a) **"conduct and activities"** includes any conduct, activity or omission in any jurisdiction,
- (b) **"offence"** includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and
- (c) **"enactment"** includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Integrity and skill.

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

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of his activities, and

- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

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

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

Business to be directed by at least two individuals.

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

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

shall effectively direct the business.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

Composition of board of directors.

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

- (a) directors with executive responsibility for the

management of the business, and

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

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

Business to be conducted in prudent manner.

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

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

- (a) he maintains or, as the case may be, will maintain –

- (i) a capital base, and

- (ii) insurance cover,

of an amount which the Commission considers appropriate,

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

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

- (ii) the times at which those liabilities will or may fall due and his assets will mature,
 - (iii) the nature and scale of his operations,
 - (iv) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group, so far as capable of affecting the company, and
 - (v) any other factors appearing to the Commission to be relevant,
- (c) he makes or, as the case may be, will make adequate provision for –
- (i) depreciation or diminution in the value of his assets (including provision for bad or doubtful debts),
 - (ii) liabilities which will or may fall to be discharged by him, and
 - (iii) losses which he will or may incur,
- (d) he maintains or, as the case may be, will maintain –
- (i) adequate accounting and other records of his business, and

- (ii) adequate systems of control of his business and records.

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

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

(4) For the purposes of –

- (a) subparagraph (2)(a), an appropriate amount is –
 - (i) an amount commensurate with the nature and scale of his operations, and

- (ii) an amount and nature sufficient to safeguard the interests of his clients and potential clients, having regard to –
 - (A) the nature and scale of his operations,
 - (B) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group, so far as capable of affecting the company, and
 - (C) any other factors appearing to the Commission to be relevant,
- (b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensee the Commission may, to such extent as it thinks appropriate, take into account –
 - (i) the assets of the applicant or licensee, and
 - (ii) the facilities which are available to him and which are capable of providing liquidity within a reasonable period, and
- (c) subparagraph 2(d) –
 - (i) records and systems shall not be regarded as adequate unless they are such as to enable –
 - (A) the business of the applicant or licensee

to be managed prudently, and

(B) the applicant or licensee to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 1(1)(f), and

(ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

6. The applicant, licensee and any person who is, or is to be, a director, controller, partner or manager of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

Power to make regulations.

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

NOTES

Schedule 4 (which was previously inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(18), with effect from 11th August, 2003) was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 32, with effect from 29th October, 2008.

In Schedule 4,

the words in, first, the first, second, the second and, third, the third pairs of square brackets in paragraph 1(1)(f)(vi) were substituted by, respectively, the Transfer of Funds (Guernsey) Ordinance, 2017, section 14(1), Schedule 2, paragraph 2, the Transfer of Funds (Alderney) Ordinance, 2017, section 14(1), Schedule 2, paragraph 2, and the Transfer of Funds (Sark) Ordinance, 2017, section 14(1), Schedule 2, paragraph 2, with effect from 26th June, 2017;

paragraph 1(1)(f)(via) was inserted by the Single Euro Payments Area (Guernsey) Ordinance, 2016, section 63(2), with effect from 27th January, 2016;

paragraphs 1(1)(f)(vib) and 1(1)(f)(vic) were inserted by the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017, regulation 1(1), with effect from 15th August, 2017;

the words "Policy and Performance Committee" in square brackets in paragraph 7 were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹⁹

The following Regulations have been made under Schedule 4:

Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017.

The following cases have referred to Schedule 4:

Bordeaux Services (Guernsey) Limited et al v. The Guernsey Financial Services Commission (2016) (Unreported, Royal Court, 11th May) (Guernsey Judgment No 18/2016);

Y v. Guernsey Financial Services Commission (2018) (Unreported, Royal Court, 29th November) (Guernsey Judgment No. 47/2018);

Guernsey Financial Services Commission v. Y [2019]GCA076 (Unreported, Court of Appeal, 17th June).

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²⁰

[SCHEDULE 5

MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY COMPANY"

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

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

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

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

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

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

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable –
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded,
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be

treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The Committee may, after consultation with the Commission, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [Policy and Performance Committee] of the Chief Pleas of Sark, make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law.]

NOTES

Schedule 5 was inserted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(18), with effect from 11th August, 2003.

In Schedule 5, the words "Policy and Performance Committee" in square brackets in paragraph 5 were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.²¹

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²²

¹ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3,

with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

^{**} Order in Council No. VIII of 2008; there are amendments not material to this Ordinance.

³ Prior to its substitution, subsection (3) was amended by the following: the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law; and the Protection of Investors (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2003, section 1(4), with effect from 17th July, 2003.

⁴ Prior to its substitution, subsection (3)(a) was amended by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25 and paragraph 28, with effect from 1st February, 1988, subject to, in the case of the amendment effected by paragraph 25, the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law.

⁵ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁶ The functions of the Policy Council under this section relating to the enactment of regulations or orders which prescribe or specify fees or charges payable to the Guernsey Financial Services Commission and ancillary matters were previously transferred to and vested in them from the Guernsey Financial Services Commission by the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015, section 1(a), with effect from 1st May, 2015, subject to, first, the savings and transitional provisions in section 3 and, second, the provisions of section 6 of the 2015 Ordinance.

⁷ The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously

transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁸ Prior to its substitution, paragraph (b) was amended by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, section 3(3), Schedule 2, paragraph 25, with effect from 1st February, 1988, subject to the transitional provisions and savings in section 26 of, and Schedule 3 to, the 1987 Law; and the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003, section 1(4), with effect from 17th July, 2003.

⁹ Subsection (7) was previously substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18(b), with effect from 29th October, 2008; and amended by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, section 1(1), with effect from 29th October, 2008.

¹⁰ Subsection (7) was previously amended by the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2008, section 2(1), with effect from 29th October, 2008.

¹¹ Previously, in accordance with the provisions of the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2021, regulation 39, with effect from 5th March, 2021, where the persons referred to therein were undertaking the work referred to in that regulation under this section, then regulation 39 of the 2021 Regulations applied; and similar provision was made by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2020, regulation 19, with effect from 4th September, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2020, regulation 18, with effect from 3rd October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020, regulation 17, with effect from 30th October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2020, regulation 18, with effect from 27th November, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2020, regulation 18, with effect from 15th December, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2021, regulation 19, with effect from 13th January, 2021; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021, regulation 32, with effect from 5th February, 2021.

¹² These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th

February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

13 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 18, with effect from 6th May, 2004.

14 The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Income Tax Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 18, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

15 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004.

16 The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

17 Prior to its repeal, sub-paragraph (kk) was amended by the Limited Partnerships (Guernsey) Law, 1995, section 45(3)(a), with effect from 1st February, 1996.

18 Prior to their repeal, these words were amended by the Limited Partnerships (Guernsey) Law, 1995, section 45(3)(b), with effect from 1st February, 1996.

19 These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

20 The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in, them from respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

21 These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of

Functions) (Guernsey) Ordinance, 2015.

22 Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.