

ORDER IN COUNCIL

XIII
1994

ratifying a Projet de Loi

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) Law, 1994

(Registered on the Records of the Island of Guernsey
on the 23rd August, 1994.)



1994

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 23rd day of August, 1994 before Sir Graham Dorey, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Stanley Walter John Jehan, Raymond Arthur Heaume, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, John Richard Rowe Henry, David Charles Lowe, Esquires and Mrs. Eileen May Glass, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd day of June, 1994, approving and ratifying a Projet de Loi entitled "The Banking Supervision (Bailiwick of Guernsey) Law, 1994", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur' thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the S n schal of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 22nd day of June 1994

PRESENT,

**The Queen's most Excellent Majesty
in Council**

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 13th day of June 1994, in the words following, viz.:—

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

“1. That, in pursuance of their Resolution of the 31st day of March 1993, the States of Deliberation at a meeting held on the 25th day of November 1993, approved a Bill or “Projet de Loi” entitled “The Banking Supervision (Bailiwick of Guernsey) Law, 1994”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 2nd day of March 1994, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 19th day of January 1994, considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Banking Supervision (Bailiwick of Guernsey) Law, 1994”, and to order that the same shall have force of Law in the Bailiwick of Guernsey.”

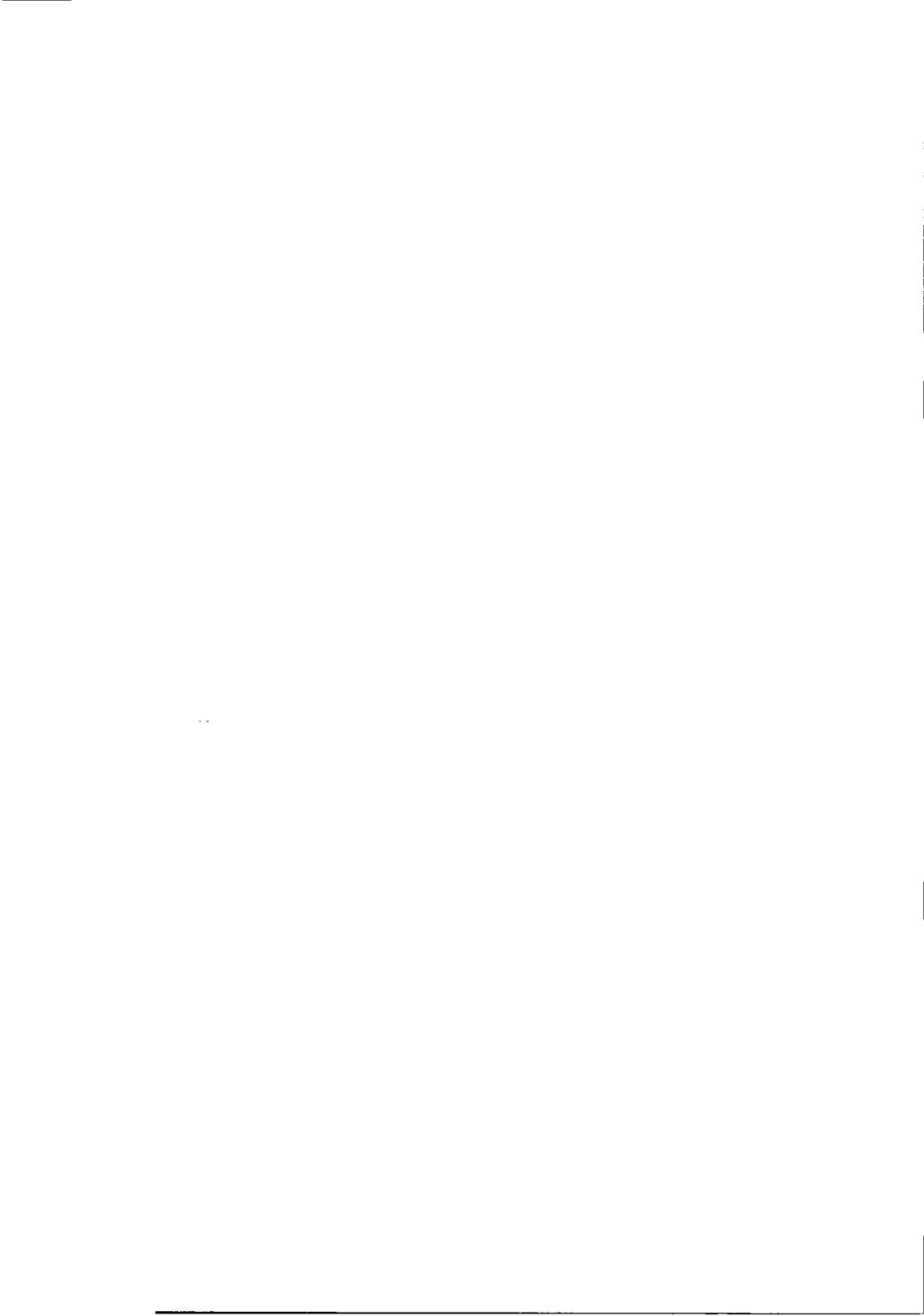
"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer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

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

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

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

N. H. Nicholls



PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) Law, 1994

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PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) Law, 1994

THE STATES, in pursuance of their Resolution of the 31st day of March, 1993(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

*Restriction on acceptance of deposits***Prohibition of unlicensed deposit-taking business.**

1. (1) Subject to the provisions of subsection (2), no person shall in the Bailiwick accept a deposit in the course of carrying on, whether in the Bailiwick or elsewhere, a deposit-taking business except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 6 (a "banking licence").

(2) This section does not apply in relation to-

(a) a person specified in Schedule 1 (provided that the exemption of a person so specified shall be subject to any restriction specified in Schedule 1 in relation to him); or

(b) a transaction of a description specified by regulations of the Committee made for the purposes of this subsection after consultation with the Commission.

(3) The Committee may, after consultation with the Commission, by regulation amend Schedule 1-

(a) by adding any person to it or removing any person from it;
or

(a) Article X of Billet d'État No. V of 1993.

- (b) by removing, relaxing or extending any restriction set out in it or by imposing any new restriction.

(4) Regulations under subsection (2) or (3) may prescribe transactions by reference to any factor appearing to the Committee to be appropriate and, in particular, by reference to all or any of the following-

- (a) the amount of the deposit in question;
- (b) the total liability of the person accepting the deposit to his depositors or other creditors;
- (c) the circumstances in which or the purpose for which the deposit is made;
- (d) the identity of the person by whom the deposit is made or accepted, including his membership of a class whose membership is determined otherwise than by the Commission;
- (e) the number of, or the amount involved in, transactions of a particular description carried out by the person accepting the deposits or the frequency with which he carries out transactions of any particular description.

(5) Regulations under subsection (2) or (3) may provide that any exemption shall be subject to such conditions or requirements as may be specified in the regulations.

- (6) A person who contravenes this section is guilty of an offence.

(7) The fact that a deposit is accepted in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

Meaning of "deposit".

2. (1) Subject to the provisions of this section and of any regulations under section 4, in this Law "deposit" means, unless the context otherwise requires, a sum of money paid on terms-

- (a) under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or the giving of security,

and references in this Law to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of subsection (1)(b), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if-

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event of the property or services not in fact being sold, hired or otherwise provided;
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(3) Except to the extent that any provision of this Law specifically provides otherwise, in this Law "deposit" does not include a sum paid-

- (a) by a licensed institution;
- (b) by a person specified in Schedule 1;
- (c) by any other person in the course of carrying on a business consisting wholly or mainly of lending money;
- (d) by one institution to another at a time when one is a subsidiary of the other, both are subsidiaries of another institution or the same individual is a shareholder controller of both;
- (e) by a person who, at the time of payment, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or manager of that person.

(4) Subsection (3)(e) shall have effect in its application to a sum paid by a partnership as if for the reference to the person paying the sum there were substituted a reference to each of the partners.

(5) In subsection (3)(e) "close relative" of a person means-

- (a) his spouse;
- (b) his children, step-children, parents, step-parents, brothers, sisters, step-brothers and step-sisters; and
- (c) the spouse of any person within paragraph (b).

Meaning of "deposit-taking business".

3. (1) Subject to the provisions of this section and of any regulations under section 4, a business is a deposit-taking business for the purposes of this Law if-

- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed to any material extent out of the capital of or the interest on money received by way of deposit.

(2) A business is not a deposit-taking business for the purposes of this Law if in the normal course of the business-

- (a) the person carrying on the business does not hold himself out as accepting deposits on a day to day basis; and
- (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.

(3) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

(4) In determining for the purposes of subsection (2)(b) whether deposits are accepted only on particular occasions, regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

(5) For the purposes of subsection (2) there shall be disregarded any deposit in respect of the acceptance of which the person in question is exempt from the prohibition in section 1(1) and any money received by way of deposit which is not used in the manner described in subsection (1).

Power to make regulations.

4. (1) The Committee may, after consultation with the Commission, make regulations-

- (a) concerning deposit-taking business;
- (b) amending the meaning of "deposit", "deposit-taking business", "holding company" and "subsidiary company" for the purposes of all or any of the provisions of this Law.

(2) Without prejudice to the generality of subsection (1)(b), regulations thereunder amending the meaning of "deposit-taking business" may provide for the taking into account, as the activities of an institution, of the activities of any person connected with it in such manner as may be specified in the regulations.

Licensing

Applications for banking licences.

5. (1) A person wishing to obtain a banking licence shall apply in that behalf to the Commission.

(2) If the applicant proposes to carry on deposit-taking business in or from within Alderney or Sark, the application shall contain a statement to that effect specifying the Island in question.

(3) An application for a banking licence shall be made in such form and manner as the Commission may require and shall be accompanied by-

- (a) a statement setting out the nature and scale of the proposed deposit-taking business, the applicant's plans for the future development of that business and particulars of the applicant's arrangements for the management of that business;

- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application; and
- (c) the appropriate fee prescribed by regulations under section 7;

provided that where the applicant is the holder of a banking licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any statement or information provided by him in connection with a previous application has changed.

(4) Upon receipt of an application for a banking 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 or manager of the applicant to provide such additional information or documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case approved by the Commission, on such aspects of that information or statement as the Commission may specify.

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

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

(8) Before deciding whether or not to grant a banking licence the Commission shall, if the application contains such a statement as is mentioned in subsection (2), consult the States of Alderney Finance Committee or, as the case may be, the Greffier of Sark.

(9) If at any time a licensed institution proposes to carry on a deposit-taking business in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (8).

Grant or refusal of banking licences.

6. (1) The Commission may, upon receipt of an application for a banking licence, grant or refuse the application.

(2) The Commission shall not grant an application for a banking licence unless satisfied that, in relation to the applicant, the criteria specified in Schedule 3 are fulfilled.

(3) In considering whether or not to grant an application for a banking licence the Commission 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(b) in relation to banking business; and, without prejudice to the generality of the foregoing provisions of this section, the Commission may also have regard to any matter to which it may lawfully have regard under section 8 when considering whether or not to revoke a banking licence.

(4) A banking licence may only be granted to an institution.

(5) The Commission may refuse an application for a banking licence which is not accompanied by the appropriate fee prescribed by regulations under section 7 or which is otherwise not made in accordance with the provisions of this Law.

Fees for banking licences.

7. The Committee may, after consultation with the Commission, by regulation prescribe fees to be payable to the Commission in respect of applications for and the grant of banking licences and, periodically, by licensed institutions in respect of banking licences; and such regulations may provide for the payment of interest or penalties in the event of default in the due payment of fees.

Revocation of banking licences.

8. (1) The Commission may revoke the banking licence of an institution if it appears to the Commission that-

- (a) any of the criteria of Schedule 3 are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution;
- (b) the institution has committed an offence under any provision of this Law or any Ordinance, regulation or rule made under it or has otherwise contravened any prohibition, restriction, condition, requirement, direction or arrangement imposed by or under any such provision;
- (c) a person has become a controller of the institution in contravention of section 14 or has become or continued to be a controller after being given notice of objection under section 14 or 15;
- (d) the Commission has been provided with false, misleading, deceptive or inaccurate information by or on behalf of the institution or, in connection with an application for a banking licence, by or on behalf of a person who is or is to be a director, controller or manager of the institution;
- (e) the interests of depositors or potential depositors of the institution are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason;
- (f) any fee prescribed by regulations under section 7 payable by the institution or in respect of the licence has not been paid;

- (g) where the institution's principal place of business is in a country outside the Bailiwick, the relevant supervisory authority in that country has withdrawn from the institution an authorisation corresponding to a banking licence under this Law;
- (h) a composition or arrangement with creditors has been made in respect of the institution, or a receiver has been appointed in respect of, or possession has been taken of, any property of the institution by or on behalf of creditors or debenture holders;
- (i) where the institution is incorporated outside the Bailiwick, an event has occurred outside the Bailiwick in relation to it which corresponds as nearly as may be to any event described in paragraph (h), (k), (l) or (m);
- (j) the institution has not accepted a deposit in the Bailiwick in the course of carrying on a deposit-taking business (whether there or elsewhere) within a period of 12 months beginning on the day on which the banking licence was granted or, having accepted a deposit as aforesaid, has subsequently not done so for any period of more than six months;
- (k) the affairs of the institution have been declared in a state of "désastre" by arresting creditors at a meeting held before a Commissioner of the Court;
- (l) a preliminary vesting order has been made against the institution in respect of any real property in the Bailiwick;
or

- (m) otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, a liquidator (provisional or otherwise) has been appointed to act in relation to the institution's estate or affairs or it has passed a special resolution requiring it to be wound up voluntarily.

(2) A decision of the Commission to revoke a banking licence shall not have effect until the end of the period within which, under section 18, an appeal can be brought or, if an appeal is brought, until the appeal is determined or withdrawn.

(3) In considering whether or not to revoke a banking 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 lawfully have regard under section 6 when considering whether or not to grant an application for a banking licence.

Conditions of banking licences.

9. (1) The Commission may, when granting a banking licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

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

(3) The Commission may vary or rescind any condition of a banking licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a banking licence may make provision as to the duration of the licence and for the protection of the institution's depositors or potential depositors; and such conditions may-

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit the institution from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller or manager;
- (f) specify requirements to be fulfilled otherwise than by action taken by the institution;
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified.

(5) An institution which contravenes any condition of a banking licence is guilty of an offence.

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

(7) An institution whose banking licence is subject to a condition as to its duration may apply under section 5 for a new banking licence and, if that licence is granted, the restricted licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a banking 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 lawfully have regard under section 6 or 8 when considering whether or not to grant an application for a banking licence or to revoke a banking licence.

Notice of refusal, etc, of banking licences.

10. (1) Where the Commission decides to refuse a banking licence or, otherwise than with the agreement of the licensed institution concerned, to revoke a banking licence or to impose, vary or rescind any condition in respect of a banking licence, the Commission shall serve upon the institution concerned notice in writing of the decision setting out, where appropriate, particulars of the condition in question.

(2) A notice under subsection (1) shall state the grounds of the Commission's decision and shall give particulars of the right of appeal conferred by section 18.

(3) An institution upon which a notice under subsection (1) is served may require the Commission to furnish it with a written statement of the reasons for the decision.

(4) Where -

(a) a ground for a decision mentioned in subsection (1) is that any criterion of paragraph 3 of Schedule 3 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

(b) a condition of a banking licence requires the removal of any person as a director, controller or manager,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 18.

Surrender of banking licences.

11. (1) A licensed institution may surrender its banking licence by notice in writing served upon the Commission.

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

(3) The surrender of a banking licence shall be irrevocable unless it is expressed to take effect on a particular date and before that date the Commission by notice in writing to the institution allows the surrender to be withdrawn.

(4) Upon the surrender of a banking licence no fee paid by the licensed institution concerned pursuant to regulations under section 7 shall be refundable.

Directions

Directions to institutions.

12. (1) The Commission may-
- (a) when serving notice under section 10 upon an institution that the Commission proposes to revoke its banking licence;
 - (b) at any time after such a notice has been served (whether before or after the banking licence is revoked);
 - (c) at any time after an institution has served a notice under section 11 surrendering its banking licence (whether or not with immediate effect); or
 - (d) in the case of an institution whose banking licence is subject to a condition as to its duration, upon the expiry of the licence or at any time thereafter;

give the institution such directions as appear to the Commission to be desirable in the interests of the institution's depositors or potential depositors, whether for the purpose of safeguarding its assets or otherwise.

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

- (a) require the institution to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) prohibit or impose limitations upon the acceptance or repayment of deposits, the granting of credit or the making of investments;
- (c) prohibit the institution from soliciting deposits either generally or from persons who are not already depositors;
- (d) prohibit the institution from entering into any other transaction or class of transactions;
- (e) require the removal of any director, controller or manager.

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

- (a) the Commission serves upon the institution concerned notice in writing that it no longer proposes to revoke the institution's banking licence; or
- (b) the Commission's decision to revoke the institution's banking licence is reversed on appeal.

(4) No direction shall be given by virtue of paragraph (c) of subsection (1), and any direction given by virtue of that paragraph shall cease to have effect, if the Commission allows the institution, under section 11(3), to withdraw the surrender of its banking licence.

(5) No direction under subsection (1) shall be given to an institution after it has ceased to have any liability in respect of deposits in respect of which it had a liability at a time when it held a banking licence; and any direction in force in respect of an institution shall cease to have effect when the institution ceases to have any such liability.

(6) An institution which contravenes any provision of a direction under subsection (1) is guilty of an offence.

(7) A contravention by an institution of a direction under subsection (1) shall not invalidate any transaction completed under the authority of the banking licence held by the institution.

(8) Where a direction under subsection (1) requires the removal of a person as director, controller or manager of an institution, the Commission shall serve upon that person a copy of the direction (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 18.

(9) The Commission may vary or rescind any direction under subsection (1) by notice in writing served upon the institution concerned.

Information as to institutions

Publication of names of licensed institutions.

13. (1) The Commission shall, in January each year, cause to be published in La Gazette Officielle a list of all institutions holding banking licences.

(2) 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 list of all institutions holding banking licences.

(3) The Commission shall publish the fact that an institution has ceased to hold a banking licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise.

(4) The Commission may also publish the fact that a particular person has been granted or refused a banking licence or that a particular person does not hold or has not held a banking licence.

(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.

Objection to controllers

Notification of and objection to controllers.

14. (1) No person shall become a shareholder controller or an indirect controller of a licensed institution incorporated in the Bailiwick unless he has notified the Commission in writing of his intention to become such a controller and the Commission has notified him in writing that there is no objection to his becoming such a controller.

(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 controller of the description in question of the licensed institution;

- (b) that the interests of depositors and potential depositors of the licensed institution would not in any other manner be threatened by that person becoming a controller of that description; or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed institution as a controller of the description in question, the criteria of Schedule 3 would continue to be fulfilled in relation to that institution or, if any of those criteria is not so fulfilled, that that person is 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, subject to subsection (5), the reasons why it is not satisfied;
- (b) give particulars of the right of appeal conferred by section 18.

(5) Subsection (4) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Objection to existing controllers.

15. (1) Where in the opinion of the Commission a person who is a shareholder controller or an indirect controller of a licensed institution incorporated in the Bailiwick is not or is no longer a fit and proper person to be such a controller, the Commission may serve him with a written notice of objection.

- (2) A notice of objection under this section shall-
- (a) subject to subsection (3), specify the reasons for the Commission's opinion; and
 - (b) give particulars of the right of appeal conferred by section 18.

(3) Subsection (2)(a) shall not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controllers.

16. A person who-

- (a) becomes a shareholder controller or an indirect controller in contravention of section 14(1); or
- (b) becomes or continues to be such a controller after a notice of objection has been served on him under section 14 or 15;

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

Restrictions on sale of shares.

17. (1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of section 14(1) or has become or continued to be such a controller after a notice of objection has been served on him under section 14 or 15.

(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;
- (d) except in a liquidation, no payment shall be made of any sum due on the shares from the licensed institution, 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 14 or 15-

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until the appeal is determined 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.

(7) This section applies -

(a) to all shares in the licensed institution 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 institution; and

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

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

Appeals

Rights of appeal.

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

(a) to refuse an application by him for a banking licence;

(b) to revoke his banking licence;

- (c) to impose or vary any condition in respect of his banking licence; or
- (d) to give him directions under section 12 or to vary any direction so given;

may appeal to the Court against the decision.

(2) Where-

- (a) a ground for a decision described in subsection (1)(a), (b) or (c) is that mentioned in section 10(4)(a); or
- (b) the effect of a decision described in subsection (1)(c) or (d) is to require the removal of a person as director, controller or manager of the institution;

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

(3) A person aggrieved by a decision of the Commission to serve a notice of objection upon him under section 14 or 15 may appeal to the Court against the decision unless the notice was served by reason of the fact that he had become a controller in contravention of section 14(1) or unless he has become a controller after the notice was served on him.

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

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

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

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

(6) If an appeal under this section is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, the Commission may apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may dismiss the appeal or make such other order as it considers just.

(7) On an appeal under this section the Court may quash the decision of the Commission against which the appeal was brought, confirm it with or without modification or substitute any other decision which the Commission could have made.

(8) On an appeal under this section against a decision described in subsection (1)(c) or (d) 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 thereof, pending the determination of the appeal.

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

Invitations to make deposits

Control of advertising.

10. (1) The Committee may after consultation with the Commission make regulations in respect of the issue, form and content of deposit advertisements.

(2) Regulations under this section may, without prejudice to the generality of subsection (1)-

- (a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise);
- (b) make provision as to the matters which must or which may not be included in deposit advertisements;
- (c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission.

(3) Subject to subsection (4), a person who issues or causes to be issued, in the Bailiwick, an advertisement the issue of which is prohibited by regulations under this section or which otherwise contravenes any provision of such regulations is guilty of an offence.

(4) A person whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under subsection (3) if he proves that he received the advertisement for publication in the ordinary course of his business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he did not know and had no reason to believe that publication of the advertisement would constitute an offence.

(5) In this section a "deposit advertisement" means any advertisement containing -

- (a) an invitation to make a deposit; or

- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit;

and for the purposes of this section an "advertisement" includes any means of bringing such an invitation or such information to the notice of the persons to whom it is addressed or directed; and references to the issue of an advertisement shall be construed accordingly.

(6) For the purposes of this section -

- (a) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited;
- (b) the issue of an advertisement inviting deposits with a person specified in the advertisement shall, unless the contrary is proved, be presumed to have been caused by that person;
- (c) an advertisement issued outside the Bailiwick shall be deemed to have been issued in the Bailiwick if it is directed to persons in the Bailiwick, or if it is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Bailiwick or a sound or television broadcast transmitted principally for reception outside the Bailiwick.

(7) If the Commission considers that any deposit advertisement issued or proposed to be issued is misleading, the Commission may give the advertiser a direction under this section.

- (8) A direction under this section may contain any or all of the following-
- (a) a prohibition on the issue of any advertisements or any advertisements of a specified description;
 - (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction;
 - (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any advertisements or any advertisements of a specified description;
 - (d) a requirement that any advertisements or any advertisements of a specified description shall be modified in a specified manner.

(9) A direction under this section shall have immediate effect, shall state the reasons for being given, shall give particulars of the rights conferred by subsection (10) and, if given orally, shall be confirmed by the Commission in writing not later than the next working day.

(10) An advertiser to whom a direction is given under this section may make written representations to the Commission; and the Commission shall, within a period of 7 days immediately following the day upon which the representations were made, take the representations into account in deciding whether to maintain or revoke the direction.

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

(12) A person who issues or causes to be issued, in the Bailiwick or elsewhere, an advertisement the issue of which is prohibited by a direction under this section or which otherwise contravenes any provision of such a direction is guilty of an offence.

Unsolicited calls.

20. (1) The Committee may after consultation with the Commission make regulations in respect of the making of unsolicited calls on persons in the Bailiwick, or from the Bailiwick on persons elsewhere, with a view to procuring the making of deposits.

(2) Regulations under this section may, without prejudice to the generality of subsection (1)-

- (a) prohibit the soliciting of deposits from, and the making of agreements with a view to the acceptance of deposits from, persons on whom unsolicited calls are made and the procuring of such persons to make deposits or to enter into such agreements;
- (b) specify persons by whom or circumstances in which unsolicited calls may be made;
- (c) require specified information to be disclosed to persons on whom unsolicited calls are made.

(3) A person who contravenes any regulation under this section is guilty of an offence.

(4) In this section "unsolicited call" means a personal visit or oral communication made without express invitation.

Fraudulent inducement to make deposit.

21. (1) A person who-

- (a) makes a statement, promise or forecast which he knows or has reasonable cause to believe to be misleading, false, inaccurate or deceptive, or dishonestly conceals any material facts; or
- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false, inaccurate or deceptive;

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)-

- (c) to make, or refrain from making, a deposit with him or any other person; or
- (d) to enter or refrain from entering into an agreement for the purpose of making such a deposit.

(2) This section does not apply unless-

- (a) the statement, promise or forecast is made, 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 deposit is or would be made, or the agreement is or would be entered into, in the Bailiwick.

(3) For the purposes of this section the expression "deposit" shall be deemed to include any sum that would otherwise be excluded by section 2(3).

Notification of certain matters

Notification of change of director, etc.

22. (1) Subject to subsection (3), a licensed institution shall give notice in writing to the Commission of the fact that any person has become or has ceased to be a director, controller or manager of the institution.

(2) 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 institution becomes aware of the relevant fact.

(3) The Commission may by notice in writing exempt from the obligation imposed by subsection (1), either wholly or in part, any licensed institution whose principal place of business is outside the Bailiwick.

(4) A licensed institution which fails to give notice in accordance with this section is guilty of an offence.

Notification of acquisition of significant shareholding.

23. (1) A person who becomes a significant shareholder in relation to a licensed institution incorporated in the Bailiwick 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 an institution, 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 institution or of any other institution incorporated in the Bailiwick of which that institution is a subsidiary.

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

Reports of large exposures.

24. (1) A licensed institution other than one whose principal place of business is outside the Bailiwick shall make a report to the Commission if it proposes to enter into transactions relating to any one person which, either alone or together with previous transactions entered into by it in relation to that person, would result in its being exposed to a risk of incurring losses in excess of 25 per cent of its capital base.

(2) Subsection (1) applies also where the transactions relate to different persons who are connected in such a way that the financial soundness of any of them may affect the financial soundness of the others or the same factors may affect the financial soundness of them all.

(3) If a licensed institution to which subsection (1) applies has subsidiaries which are not licensed institutions, the Commission may by notice in writing to the licensed institution direct that subsection (1) shall apply to it as if the transactions and capital base of the subsidiaries, or such of them as are specified in the notice, were included in those of the institution.

(4) The reports required to be made under subsection (1) shall be made before the transactions are entered into or at such time (if any) after the transactions are entered into as may be specified by notice in writing given by the Commission to the institution; and such reports shall be in such form and shall contain such particulars as the Commission may reasonably require.

(5) An institution which fails to make a report in accordance with this section is guilty of an offence unless it shows that it was not aware that the facts were such as to require the making of the report; but in such a case the institution shall be guilty of the offence if it fails to make the report within a period of 7 days immediately following the day upon which it becomes so aware.

(6) The Commission, upon becoming aware (whether upon receipt of a report under subsection (1) or otherwise)-

- (a) of a proposal to enter into a transaction described in subsection (1);
- (b) that such a transaction has been entered into;

may require the institution concerned and any relevant subsidiary thereof to make such arrangements within such time as may appear to the Commission to be desirable for the protection of the institution's capital base.

(7) An arrangement under subsection (6) shall be notified in writing by the Commission to the institution concerned; and the institution shall comply with the arrangement in all respects.

(8) Any question as to whether an institution is or would be exposed to risk as mentioned in subsection (1) (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Commission or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.

(9) For the purposes of this section, the capital base of an institution (or, in a case within subsection (3), of an institution and its relevant subsidiaries) and the value of that capital base at any time shall be determined by the Commission and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Commission after consultation with the institution concerned and in accordance with principles published by the Commission.

(10) The principles referred to in subsections (8) and (9) may make different provisions for different cases; and those referred to in subsection (8) may in particular exclude from consideration, in whole or in part, risks resulting from transactions of a

particular description or entered into in particular circumstances or with persons of particular descriptions.

(11) The Committee may, after consultation with the Commission, by regulation-

- (a) amend subsection (1) so as to substitute, for the percentage for the time being specified therein, some other percentage;
- (b) make provision for determining for the purposes of this section whether a transaction entered into by an institution relates to any person; and
- (c) make provision in respect of the transactions and risks to be taken into account for the purposes of this section.

Obtaining of information

Power to obtain information and documents.

25. (1) The Commission may, with the prior written authority of not less than two ordinary members, by notice in writing served on a licensed institution require the institution to provide the Commission-

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

(2) The Commission may, with the prior written authority of not less than two ordinary members-

- (a) by notice in writing served on a licensed institution, require it to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified;
- (b) authorise any of its officers, servants or agents, on producing evidence of his authority, to require a licensed institution to furnish him forthwith with such information and documents as he may specify,

being such information or documents as the Commission may reasonably require for the performance of its functions under this Law.

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

(4) The power conferred by this section to require an institution or other person to produce any documents includes power-

- (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, the institution in question, to provide an explanation of them; and

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

(5) If it appears to the Commission to be desirable in the interests of the depositors or potential depositors of a licensed institution to do so, the Commission may also exercise the powers conferred by this section in relation to any body corporate which is or has at any relevant time been-

- (a) a holding company, subsidiary or related company of the licensed institution;
- (b) a subsidiary of a holding company of the licensed institution;
- (c) a holding company of a subsidiary of the licensed institution;
or
- (d) a body corporate in the case of which a shareholder controller of the licensed institution, alone or with associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting.

(6) For the purposes of this Law a "related company", in relation to an institution, means any body corporate (other than one which is a group company in relation to that institution) in which that institution holds for a significant period a qualifying capital interest for the purpose of securing a contribution to that institution's own activities by the exercise of any control or influence arising from that interest.

(7) For the purposes of this Law a "qualifying capital interest" means, in relation to any body corporate, an interest in shares comprised in the equity share capital of that body corporate of a class carrying rights to vote in all circumstances at general meetings of that body corporate.

(8) Where-

- (a) an institution holds a qualifying capital interest in a body corporate; and
- (b) the nominal value of any relevant shares in that body corporate held by that institution is equal to 20 per cent or more of the nominal value of all relevant shares in that body corporate;

the institution shall be presumed to hold that interest on the basis and for the purpose mentioned in subsection (6), unless the contrary is shown; and in this subsection "relevant shares" means, in relation to any body corporate, any such shares in that body corporate as are mentioned in subsection (7).

(9) The foregoing provisions of this section shall apply in relation to a former licensed institution as they apply in relation to a licensed institution.

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

(11) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to any person who is a significant shareholder of a licensed institution if the Commission considers that it is desirable to do so in the interests of the depositors or potential depositors of that institution.

(12) A person who without reasonable excuse, proof whereof shall lie on him, fails to comply with a requirement imposed on him under this section is guilty of an offence.

(13) A statement made by a person in compliance with this section may be used in evidence against him.

(14) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

Right of entry to obtain information and documents.

26. (1) An officer, servant or agent of the Commission may, with the prior authority of not less than two ordinary members and on production if required of evidence of his authority, enter any premises occupied by a person on whom a notice-

- (a) has been served under section 25, for the purposes of obtaining the information or documents required by the notice and of exercising the powers conferred by section 25;
- (b) could be served under section 25, for the purpose of obtaining such information or documents as are specified in the authority, being information or documents that could be required by a notice; but the Commission shall not authorise any person to act under this paragraph unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A person who without reasonable excuse, proof whereof shall lie on him, obstructs or fails to give all reasonable assistance to a person exercising or purporting to exercise any power conferred by this section is guilty of an offence.

Investigations by inspectors.

27. (1) The Commission may, with the prior authority of not less than two ordinary members, and if it considers it desirable to do so in the interests of the depositors or potential depositors of a licensed institution, appoint one or more competent persons (hereinafter called "inspectors") to investigate and report to the Commission on-

- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
- (b) the ownership or control of the institution;

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

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, investigate the business of any other institution which is or has at any relevant time been-

- (a) a holding company, subsidiary or related company of the institution under investigation;
- (b) a subsidiary or related company of a holding company of the institution under investigation;
- (c) a holding company of a subsidiary of the institution under investigation; or
- (d) a body corporate in the case of which a shareholder controller of the institution under investigation, either alone or with associates, is entitled to exercise, or control the exercise of, more than 20 per cent of the voting power at a general meeting.

(3) Where an inspector decides to investigate the business of an institution under subsection (2), he shall give notice in writing to the institution to that effect.

(4) Any person who is or has been a director, controller, manager, employee, agent, banker, auditor, advocate or other legal adviser of an institution being investigated under subsection (1) or (2), or who has been appointed to make a report in

respect of that institution under section 5(5) or section 25(1)(b), or who is a significant shareholder in relation to that institution-

- (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 institution; 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 institution; and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) The foregoing provisions of this section shall apply in relation to a former licensed institution as they apply in relation to a licensed institution.

(6) An inspector may, for the purposes of exercising his powers under this section, enter any premises occupied by an institution being investigated by him; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

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

(8) A person who without reasonable excuse, proof whereof shall lie on him-

- (a) contravenes any provision of subsection (4); or
- (b) obstructs 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.

(9) A statement made by a person in compliance with a requirement imposed by or under this section may be used in evidence against him.

(10) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

Investigation of suspected offences.

28. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 1 or 21, the Commission may, with the prior authority of not less than two ordinary members, by notice in writing require that person or any other person-

- (a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence;
- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

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

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1);

- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document;
- (c) enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining the information or documents required by the notice, putting the questions referred to in subsection (1)(b) or exercising the powers conferred by paragraph (a) and (b).

(3) A person who without reasonable excuse, proof whereof shall lie on him, fails to comply with any requirement of a notice under subsection (1) or obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

(4) A statement made by a person in compliance with a requirement imposed under this section may be used in evidence against him.

(5) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

Power of entry in cases of suspected offences.

29. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 1 or 21 and that-

- (a) a person has failed to comply with any requirement of a notice under section 28(1);

- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice;
- (c) it is not practicable to serve a notice under section 28(1); or
- (d) there are reasonable grounds for suspecting that if such a notice were served-
 - (i) it would not be complied with;
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed; or
 - (iii) the service of the notice might seriously prejudice the investigation,

he may grant a warrant under this section.

(2) A warrant under this section shall authorise any officer of police, together with any other person named in the warrant-

- (a) to enter any premises specified in the warrant, being premises-
 - (i) which are occupied by the person upon whom the notice under section 28(1) was served;
 - (ii) upon which the documents to which the notice relates are reasonably believed to be; or
 - (iii) in cases where no such notice has been served, upon which the documents to which the notice

would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose;

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant-
 - (i) to answer questions relevant for determining whether he or any other person has committed an offence under section 1 or 21;
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b);
 - (iii) to make an explanation of any such documents.

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

(4) Any documents of which possession is taken under this section may be retained-

- (a) for a period of three months; or

- (b) if within that period proceedings to which the documents are relevant are commenced against any person for an offence under section 1 or 21, until the conclusion of those proceedings.

(5) A person who without reasonable excuse, proof whereof shall lie on him, obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a person exercising or purporting to exercise any right conferred by a warrant under this section is guilty of an offence.

(6) A statement made by a person in compliance with a requirement imposed by or under this section may be used in evidence against him.

Falsification, etc, of documents during investigation.

30. A person-

- (a) who knows or has reasonable grounds to suspect that an investigation is being or is likely to be carried out under section 27 or 28; and
- (b) who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, the documents which he knows or has reasonable grounds to suspect are or would be relevant to such an investigation;

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

Accounts and Auditors

Audited accounts to be available for inspection.

31. (1) A licensed institution shall at each of its offices in the Bailiwick at which it holds itself out as accepting deposits-

(3) In relation to a person appointed to make a report under section 5(5) or 25(1)(b), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which-

(a) relates to the business or affairs of the institution in relation to which his report is made or any associated body thereof; or

(b) if his report relates to an associated body of an institution, relates to the business or affairs of that body.

(4) In this section the expression "associated body" means, in relation to an institution, any such body as is described in section 25(5).

(5) If it appears to the Committee after consultation with the Commission that any accountants or class thereof to whom subsection (1) applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in that subsection, the Committee may, after consultation with the Commission in relation to the views of such bodies as appear to the Commission to represent the interests of accountants and licensed institutions, by regulation specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it shall be the duty of any accountant to whom the regulations apply to communicate a matter to the Commission in the circumstances specified in the regulations.

(6) This section applies in relation to the auditor of a former licensed institution as it applies in relation to the auditor of a licensed institution.

Miscellaneous powers of Commission

Repayment of unauthorised deposits and profits.

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

- (a) order him and any other person who appears to the Court to have been knowingly concerned in the contravention to repay the deposits forthwith or at such time as the Court may direct; or
- (b) appoint a receiver (upon such terms and conditions and with such functions as the Court may direct) to recover those deposits.

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

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

(4) Any amount paid to Her Majesty's Sheriff or recovered by a receiver pursuant to subsection (2) shall be distributed among such persons as the Court may direct, being persons appearing to the Court to have made the deposits as a result of which the profits accrued or such other persons as the Court thinks just.

(5) On an application under subsection (2) the Court may require the person concerned to furnish such accounts or other information as it may require for determining whether and if so what profits have accrued to him as mentioned in that subsection and for determining how any amounts are to be distributed under subsection (4); and the Court may require any such accounts or information to be verified in such manner as it may direct.

Injunctions to restrain unlawful deposit-taking, etc.

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

- (a) there is a reasonable likelihood that a person will contravene section 1, 21, 37 or 41, a direction under section 12 or 19, a regulation under section 19 or 20 or an arrangement under section 24(8); or
- (b) a person may have been guilty of such a contravention and that there is a reasonable likelihood that the contravention will continue or be repeated;

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have been guilty of a contravention mentioned in subsection (1)(a), the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

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

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

(c) Ordres en Conseil Vol.XXX, p.145.

(5) An application by the Commission for an injunction under this section may, with the approval of the Court, be made ex parte.

Winding-up on application of Commission.

36. The Court (or, in the case of a company registered in Alderney, the Court of Alderney), on the application of the Commission under this section, may order the winding-up of a licensed institution, a former licensed institution or an institution (licensed or not) which is guilty of any such contravention as is described in section 35(1)(a) if-

- (a) the institution is unable to pay its debts within the meaning of Article LXXII of the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée registered on the 21st March, 1908(d) or, in the case of a company registered in Alderney, section 2(2) of the Companies (Amendment) (Alderney) Law, 1962(e);
- (b) the institution has defaulted in an obligation to pay any sum due and payable in respect of a deposit; and for the purposes of this section the expression "deposit" shall be deemed to include any sum that would otherwise be excluded by section 2(3)(a), (b) or (c); or
- (c) the Court is of the opinion that it is just and equitable that the institution should be wound up;

and where such an order is made, the provisions of the Companies (Guernsey) Laws or, as the case may be, the Companies (Alderney) Laws shall apply accordingly.

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

(e) Ordres en Conseil Vol.XIX, p.33.

PART II
BANKING DESCRIPTIONS AND NAMES

Restrictions on use of certain descriptions and names.

37. (1) No person carrying on any business in the Bailiwick, other than a licensed institution, a person specified in paragraph 2, 3, 4 or 5 of Schedule 1 or a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission, shall so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language) that he is a bank or banker or is carrying on a banking business.

(2) No person carrying on any business in the Bailiwick, other than a licensed institution, a person specified in paragraph 2 or 3 of Schedule 1 or a person who has first obtained the permission of the Commission in that behalf under section 38 and who is acting in accordance with the conditions of that permission, shall use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that he is a bank or banker or is carrying on a banking business.

(3) No person other than a licensed institution shall describe himself as a licensed institution or so hold himself out as to indicate or reasonably be understood to indicate that he is a licensed institution.

(4) No person shall falsely state, or do anything which falsely indicates, that he is entitled although not a licensed institution to accept a deposit in the course of carrying on a business which for the purposes of this Law is a deposit-taking business.

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

Permission to use certain descriptions or names.

38. (1) A person wishing to obtain permission for the purposes of section 37 shall apply in that behalf to the Commission.

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

(3) The Commission may, upon receipt of an application under subsection (1), grant the application unconditionally or subject to such conditions as it may consider necessary or expedient, or refuse the application.

Commission may object to certain names.

39. (1) Where a person applies for a banking licence under this Law he shall give notice in writing to the Commission of any name he is using or proposing to use in connection with any business carried on by him and the Commission may, by notice in writing served upon him, object to that name.

(2) Where a licensed institution proposes to change any name it uses for the purposes of or in connection with any business carried on by it, it shall give notice in writing to the Commission of the proposed name and the Commission may, within a period of 28 days immediately following the receipt by it of such notice, by notice in writing served upon the institution object to the proposed name.

(3) The Commission shall not give notice objecting to a name under subsection (1) or (2) unless it considers that the name is misleading to the public or otherwise undesirable.

(4) For the purposes of this section-

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

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

(5) Where as a result of a material change in circumstances since the time when notice was given to the Commission under subsection (1) or (2) or as a result of further information becoming available to the Commission since that time, it appears to the Commission that a name to which it might have objected under that subsection gives so misleading an indication of the nature of the activities of the person in question as to be likely to cause harm to the public, the Commission may, by notice in writing served upon that person, object to that name.

(6) The Commission may also exercise the powers conferred by subsection (5) in cases where the person in question failed to give notice to the Commission in accordance with subsection (1) or (2).

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

Appeals against objections to names.

40. (1) A person aggrieved by a notice served upon him by the Commission under section 39 objecting to a name may appeal to the Court against the notice.

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

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

- (a) within a period of 28 days immediately following the date of the notice;
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) If an appeal under this section is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, the Commission may apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may dismiss the appeal or make such other order as it considers just.

(5) On an appeal under this section the Court may quash the notice in respect of which the appeal was brought or confirm it with or without modification.

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

Offences in relation to objections to names.

41. (1) Where the Commission gives notice objecting to a name under section 39, the person upon whom the notice was served shall not use or cause or permit to be used the name for the purposes of or in connection with any business carried on in the Bailiwick after the notice takes effect.

(2) A notice of objection-

(a) under section 39(1) or (2), takes immediate effect;

(b) under section 39(5), takes effect at the end of the period within which, under section 40, an appeal can be brought or, if an appeal is brought, when the appeal is determined or withdrawn.

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

Incorporation and change of name of companies.

42. Without prejudice to the provisions of any other enactment, no application made to the Court or the Court of Alderney under the provisions of the Companies (Guernsey) Laws or, as the case may be, the Companies (Alderney) Laws-

- (a) for permission for the registration of a company in the proposed name of which there appears the word bank, banker or banking or any cognate expression, whether in English or any other language;
- (b) for the approval of a change of name of a company registered in the Bailiwick by the inclusion (whether in English or any other language) of the word bank, banker or banking or any cognate expression;

shall be granted unless the applicant establishes that it is a licensed institution or that it has obtained the permission of the Commission in that behalf under section 38 and any conditions subject to which that permission was granted have, so far as practicable, been complied with; and no such application shall be granted where a notice of objection under section 39 is in force in respect of the proposed name.

PART III
DISCLOSURE OF INFORMATION

Restrictions on disclosure of information.

43. (1) Subject to the provisions of section 44-
- (a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person;
 - (b) no person who obtains any such information directly or

indirectly from a person who has so received it;

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

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

Cases where disclosure is permitted.

44. Section 43 does not preclude-

- (a) the disclosure of information which at the time of disclosure is or has already been made available to the public from other sources or 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, or any body established by Ordinance under section 46 for the purposes of a scheme for the protection of depositors, 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 licensed institution or former licensed institution if it appears to the Commission that the disclosure would enable or assist the Commission to discharge its functions under this Law or would otherwise be in the interest of depositors;
- (d) where the Commission considers it necessary, in order to enable or assist it to discharge its functions under this Law, 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 depositors or in the public interest;
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its supervisory 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 order, regulation or rule made under it;
- (h) the disclosure of information 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 licensed institution or former licensed institution or by an accountant or other person nominated or approved for the purposes of section 5(5) or 25(1)(b) or appointed under section 27;
- (k) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under section 27, 28 or 29 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable;

- (l) where information is disclosed to an officer of police under paragraph (k), the disclosure of that information by an officer of police for the purposes of a 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 depositors or investors (whether in the Bailiwick or elsewhere) 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 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 otherwise for the purposes or in the circumstances described in section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(f).

Information supplied by relevant overseas authority.

45. (1) Section 43 applies also in relation to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority in a country outside the Bailiwick.

- (2) Information described in subsection (1) may be disclosed only
 - (a) with the consent of the persons whose consent is referred to in section 43(1); or
 - (b) for the purposes or in the circumstances described in section 44(a), (b) or (h).

PART IV
COMPENSATION SCHEMES

Power to establish compensation schemes.

46. (1) The States may by Ordinance establish any scheme considered by them to be desirable or expedient for the protection and compensation of depositors or investors in cases where licensed institutions or former licensed institutions are unable, or are likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with their deposit-taking business.

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

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

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

PART V
OFFENCES AND PENALTIES

False or misleading information.

47. (1) A person who-
- (a) in connection with an application for a banking licence under this Law;
 - (b) in purported compliance with a requirement imposed by or under this Law or any order, regulation or rule made under it; or

- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which the person providing the information or document intends, or could reasonably be expected to know, that the information or document would or might be used by the Commission for the purpose of exercising its functions under this Law-
- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
 - (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular;
 - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
 - (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular;

is guilty of an offence.

(2) A licensed institution or former licensed institution which fails to provide the Commission with any information in its possession knowing or having reasonable cause to believe-

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

is guilty of an offence.

Penalties.

48. (1) A person guilty of an offence under section 1(8), 16, 19(3), 19(12), 20(3), 21(1), 25(12), 26(2), 27(8), 28(3), 29(5), 30, 37(5), 41(3), 43(2) or 47(1) is 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.

(2) A person or institution guilty of an offence-

- (a) under section 22(4), 23(3), 24(5), 31(4) or 32(4) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale;
- (b) under section 9(5), 12(6) or 47(2) is liable on conviction to a fine.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(a) and (2)(a) shall be

applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987(g) and section 23 of the Reform (Sark) Law, 1951(h).

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

Criminal liability of directors, abettors, etc.

49. (1) Where an offence under this Law is committed by an institution and 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, chief executive, controller, manager, secretary or other similar officer of the institution or any person purporting to act in any such capacity, he as well as the institution is guilty of the offence and may be proceeded against and punished accordingly.

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

(3) Without prejudice to the generality of subsection (1), a person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law may be proceeded against and punished as a principal offender.

Defence of due diligence.

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

(g) Ordres en Conseil Vol.XXX, p.37; and No.VI of 1989.

(h) Ordres en Conseil Vol.XV, p.215; Vol.XXIII, p.200; Vol.XXIX, p.27; No.VII of 1989; and No.XII of 1991.

Summary jurisdiction.

51. Summary proceedings for an offence under this Law wherever committed may, without prejudice to any jurisdiction exercisable apart from this section, be taken before any court of summary jurisdiction in the Bailiwick.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

Verification of information.

52. The Commission may direct that any information, document or statement furnished to it in compliance or purported compliance with any requirement imposed by or under any provision of this Law or of any Ordinance, regulation or rule under it shall be verified in such manner as the Commission may specify; and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been furnished in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

Service of notices.

53. (1) Any document to be given or served under this Law may be given to or served upon-

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
- (b) an institution with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;
- (c) an institution without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick;

- (d) an unincorporated body, by being given to or served on any partner, member, manager, controller or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere;
- (e) the Committee, by being left at, or sent by post or transmitted to, its principal office in the Bailiwick;
- (f) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick;

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

(2) If a person notifies the Commission of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post to, or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

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

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

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian; and if there is no guardian, the Commission may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

Evidence.

54. (1) In any proceedings, a certificate purporting to be signed on behalf of the Commission and certifying-

- (a) that a particular person is or is not a licensed institution or was or was not such an institution at a particular time;
- (b) that a particular person was or was not registered under the provisions of section 4 of the Ordinance of 1971 or was or was not so registered at a particular time;
- (c) the date on which a particular person obtained or ceased to hold a banking licence or was registered or ceased to be registered as mentioned in paragraph (b);
- (d) the terms of any conditions imposed in respect of a particular person's banking licence or subject to which a person was registered as mentioned in paragraph (b);

shall be admissible in evidence.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

Limitation of Liability.

55. No liability shall be incurred by, or by any Committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or by the Commission, or by any member, officer or servant of any of the aforesaid, in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported

discharge of any function conferred by or under this Law unless the thing was done or omitted to be done in bad faith.

Interpretation.

56. (1) In this Law, unless the context otherwise requires-

"**associate**", in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an institution, means-

- (a) the spouse, child or step-child of that person;
- (b) any body corporate 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 body corporate-
 - (i) any director or subsidiary of that body corporate; 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 that institution or under which they undertake to act together in exercising their voting power in relation to it, that other person;

"**auditor**" means a person who is qualified for appointment as an auditor by virtue of section 19(1)(a) or (b) of the Companies (Guernsey) Law, 1990(i) and who is authorised by the Commission to audit the accounts

(i) Order in Council No.XXVII of 1990.

of licensed institutions;

"Bailiff"-

- (a) in relation to the Bailiwick, means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué;
- (b) in relation to Alderney, includes the Chairman of the Court of Alderney; and
- (c) in relation to Sark, includes the Seneschal;

"Bailiwick" means the Bailiwick of Guernsey;

"banking licence" has the meaning given in section 1;

"capital base", in relation to a licensed institution and any relevant subsidiary thereof, means the capital base determined by the Commission under section 24 after consultation with the institution concerned and in accordance with principles published by the Commission;

"chief executive", in relation to an institution, 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 institution and, in relation to an institution 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;

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

"the Committee" means the States of Guernsey Advisory and Finance Committee;

"the Companies (Alderney) Laws" means the Companies (Alderney) Laws, 1894 to 1962(k);

"the Companies (Guernsey) Laws" means the Companies (Guernsey) Laws, 1908 to 1990(l);

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly;

"controller", in relation to an institution, means-

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

"country" includes a territory;

"the Court" means the Royal Court sitting as an Ordinary Court;

"deposit" has the meaning given in section 2;

"deposit-taking business" has the meaning given in section 3;

"director", in relation to an institution, includes any person who occupies the position of director, by whatever name called;

(k) Ordres en Conseil Vol.II, p.451; and Vol.XIX, p.33.

(l) Ordres en Conseil Vol.IV, p.178; Vol.X, p.298; Vol.XVII, p.444; Vol.XX, p.17; Vol.XXIV, p.14; and No.XXVII of 1990.

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form;

"equity share capital" means, in relation to an institution, 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;

"former licensed institution" means an institution which-

- (a) does not hold and is not deemed to hold a banking licence;
- (b) has previously held such a licence or was registered under the provisions of section 4 of the Ordinance of 1971; and
- (c) continues to have a liability in respect of a deposit for which it had a liability at a time when it was so licensed or registered;

"group", in relation to an institution, means that institution, any other institution which is its holding company or subsidiary and any other institution which is a subsidiary of that holding company;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"holding company" has the meaning given in Schedule 2, subject to any regulations under section 4;

"indirect controller", in relation to an institution, means a person in accordance with whose directions or instructions any director of that institution or of any other body corporate of which that institution is a subsidiary, or any controller of that institution, is accustomed to act;

"inspector" means a person appointed by the Commission under section 27(1);

"institution" means a body corporate incorporated with or without limited liability in any part of the world;

"licensed institution" means an institution which holds or which is deemed to hold a banking licence;

"manager", in relation to an institution, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the institution-

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

"officer of police" means-

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey 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 the said police force and a member of any police force which may be established by the States of Alderney;
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey;

"the Ordinance of 1971" means the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971(m);

"ordinary member" means an ordinary member of the Commission within the meaning of paragraph 1 of Schedule 1 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

"related company" has the meaning given in section 25(6);

"relevant supervisory authority", in relation to a country outside the Bailiwick, means the authority discharging in that country functions corresponding to those of the Commission under this Law;

"shareholder controller", in relation to an institution, 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 institution or of any other institution of which that institution is a subsidiary;

"significant shareholder" has the meaning given in section 23(2);

"subsidiary company" has the meaning given in Schedule 2, subject to any regulations under section 4; and **"subsidiary"** has the same meaning.

(2) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

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

(m) Recueil d'Ordonnances Tome XVII, p.225.

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

Repeals.

57. The following enactments are repealed-

- (a) Part I of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969(o);
- (b) the Ordinance of 1971(p);
- (c) the Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1985(q);
- (d) section 3(1)(a) of, and paragraphs 8, 10 and 11 of Schedule 2 to, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987(r);
- (e) the Protection of Depositors (Bailiwick of Guernsey) (Amendment) Ordinance, 1988(s);
- (f) the Protection of Depositors (Bailiwick of Guernsey) (Amendment No.2) Ordinance, 1988(t);
- (g) the Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1990(u); and

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- (o) Ordres en Conseil Vol.XXII, p.26.
 - (p) Recueil d'Ordonnances Tome XVII, p.225.
 - (q) Recueil d'Ordonnances Tome XXIII, p.291.
 - (r) Ordres en Conseil Vol.XXX, p.243.
 - (s) Recueil d'Ordonnances Tome XXIV, p.269.
 - (t) Recueil d'Ordonnances Tome XXIV, p.326.
 - (u) No.XXII of 1990.

- (h) section 8 of the Administration of Justice (Bailiwick of Guernsey) Law, 1991(v).

Savings.

58. (1) Notwithstanding the repeal of the Ordinance of 1971 by section 57(b), an institution which, immediately before the commencement of this Law, was registered under the provisions of section 4 of that Ordinance shall, on the commencement of this Law, be deemed to have been granted a banking licence under this Law, and the provisions of this Law shall apply in relation to it accordingly; and, without prejudice to the generality of the foregoing, any condition imposed by or under the Ordinance of 1971 in respect of that institution's registration or in respect of registered persons generally shall be deemed to be a condition imposed in respect of its banking licence under section 9 of this Law.

(2) Any dispensation given under the Ordinance of 1971 and in force immediately before the commencement of this Law shall be deemed to have been given under the corresponding provision of this Law and shall, except to the extent that it is inconsistent with the provisions of this Law, continue in force until varied, rescinded or replaced under the provisions of this Law.

(3) Any reference, howsoever expressed, in any enactment, statutory instrument or rule of court to an enactment repealed and re-enacted (with or without modification) by any provision of this Law shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

Amendments.

59. (1) In section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987(w), in the definition of "group", for the words "section 20 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971" substitute "section 56(1) of the Banking Supervision (Bailiwick of Guernsey) Law, 1993".

(v) No.I of 1991.

(w) Ordres en Conseil Vol.XXX, p.281.

(2) In section 21(3)(a) of the Insurance Business (Guernsey) Law, 1986(x), for the words "registered under any Ordinance made under section 1 of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969" substitute "holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1993".

(3) In Part III of the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969, the words "bank", "banker" and "banking" wherever appearing are repealed.

(4) In section 2(1)(a) of the Bankers Books Evidence (Guernsey) Law, 1954(y) after "any" insert "person holding or deemed to hold a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1993 or any other".

General provisions as to regulations, etc.

60. (1) Any Ordinance, regulation or rule under this Law-

- (a) may be amended or repealed by a subsequent Ordinance, regulation or rule, as the case may be, hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient;
- (c) shall, in the case of a regulation or rule, be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new regulation or rule.

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

(y) Ordres en Conseil Vol.XVI, p.24; and Vol.XXVIII, p.431.

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

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

(b) so as to make, as respects the cases in relation to which it is exercised-

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

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

Citation and commencement.

81. (1) This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

(2) This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

SCHEDULE 1

Exempted persons.

1. The States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

2. The central bank of a member state of the Organisation for Economic Co-operation and Development.

3. The National Savings Bank of the United Kingdom within the meaning of the Post Office Act 1969(z).

4. (1) A friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974(aa) or section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970(ab).

- (2) This paragraph applies only to the acceptance of deposits in the course of carrying out transactions permitted by the rules of the society concerned.

5. (1) An insurer registered under section 11 of the Insurance Business (Guernsey) Law, 1986 to carry on insurance business of a class specified in that Law.

- (2) A person exempt from such registration under section 8 of the said Law.

- (3) This paragraph applies only to the acceptance of deposits in the course of lawfully carrying on-
 - (a) in the case of a person described in subparagraph (1), the authorised insurance business;

(z) An Act of Parliament (1969 c.48).

(aa) An Act of Parliament (1974 c.46).

(ab) An Act of Parliament (1970 c.31).

- (b) in the case of a person described in subparagraph (2),
insurance business;

in accordance with the said Law.

SCHEDULE 2**Meaning of "holding company" and "subsidiary company"**

1. For the purposes of this Law an institution 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 institution is a subsidiary of any institution which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of an institution's board of directors shall be deemed to be controlled by another institution if, but only if, that other institution 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 institution 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 institution of such a power;

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other institution;

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

3. In determining whether an institution 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 institution 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 an institution shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

SCHEDULE 3**MINIMUM CRITERIA FOR LICENSING****Integrity and skill.**

1. The business of the institution is or, in the case of an institution which is not yet carrying on deposit-taking business, will be carried on with prudence, professional skill and integrity appropriate to the nature and scale of its activities and in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

Economic benefit.

2. The Bailiwick is deriving or, in the case of an institution which is not yet carrying on deposit-taking business, will derive economic benefit from the institution's operation to an extent acceptable to the Commission.

Directors, etc. to be fit and proper persons.

3. (1) Every person who is, or is to be, a director, controller or manager of the institution is a fit and proper person to hold that position.

(2) In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to his probity, competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors of the institution are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has-

- (a) committed an offence involving fraud or other dishonesty or violence;

- (b) contravened any provision contained in or made under this Law, the Ordinance of 1971 or any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent;
- (c) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

Business to be directed by at least two individuals.

4. At least two individuals shall effectively direct the business of the institution.

Composition of board of directors.

5. In the case of an institution incorporated in the Bailiwick the directors include such number (if any) of directors without executive responsibility for the management of its business as the Commission considers appropriate having regard to the circumstances of the institution and the nature and scale of its operations.

Business to be conducted in prudent manner.

6. (1) The institution conducts or, in the case of an institution which is not yet carrying on deposit-taking business, will conduct its business in a prudent manner.

(2) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain a capital base-

- (a) of an amount commensurate with the nature and scale of the institution's operations; and
- (b) of an amount and nature sufficient to safeguard the interests of the institution's depositors and potential depositors, having regard to the particular factors mentioned in sub-paragraph (3) and any other factors appearing to the Commission to be relevant.

(3) The particular factors mentioned in sub-paragraph (2)(b) are-

- (a) the nature and scale of the institution's operations; and
- (b) the risks inherent in those operations and in the operations of any other institution in the same group so far as capable of affecting the institution.

(4) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets will mature, to the factors mentioned in sub-paragraph (3) and to any other factors appearing to the Commission to be relevant.

(5) For the purposes of sub-paragraph (4) the Commission may, to such extent as it thinks appropriate, take into account, as liquid assets, the assets of the institution and the facilities which are available to it and which are capable of providing liquidity within a reasonable period.

(6) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.

(7) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

(8) The records and systems described in sub-paragraph (7) shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed and the institution to comply with the duties imposed on it by or under this Law; and in determining whether those systems are adequate the Commission shall have regard to the functions and responsibilities in respect of them of any such directors of the institution as are described in paragraph 5.

(9) Sub-paragraphs (2) to (8) are without prejudice to the generality of sub-paragraph (1).

A. E. BOHAN,
Her Majesty's Deputy Greffier.

