

**The Financial Guarantee Insurance  
(Peak International Limited) Ordinance, 1997**

**ARRANGEMENT OF SECTIONS**

1. Designation of Peak International Limited
2. Conditions precedent to commencement of business

**Licensing**

3. Licence to carry on business
4. Licence conditions
5. Issue, duration, endorsement and return of licence
6. Suspension of licence
7. Cancellation of licence
8. Representations prior to cancellation etc.
9. Appeals

**Resources, reserves and exposure limits**

10. Surplus to policyholders
11. Contingency reserves
12. Loss reserves
13. Unearned premium reserve
14. Overall exposure limits
15. Single risk exposure limits
16. Excess of limits

**Accounts and audit**

17. Preparation and filing of annual accounts
18. Audit
19. Notification in respect of auditors
20. Communications by auditors to Commission

**Conduct of business**

21. Restrictions on business
22. Policy terms
23. Re-insurance
24. Investment restrictions
25. Prohibition on offering inducements
26. Annual return, plan of operation, and fee
27. General representative

### *Supplementary provisions*

28. Meaning of "collateral" and other technical terms
29. General interpretation and construction
30. Citation
31. Commencement

### SCHEDULES

- Schedule 1: Admitted assets
- Schedule 2: Collateral
- Schedule 3: Glossary of technical terms

**The Financial Guarantee Insurance  
(Peak International Limited) Ordinance, 1997**

**THE STATES**, in pursuance of their Resolution of 18th April, 1997<sup>a</sup> and in exercise of the powers conferred on them by sections 1, 2 and 3 of the Insurance Business (Financial Guarantee Insurance : Special Provisions) (Guernsey) Law, 1996<sup>b</sup> hereby order:

**Designation of Peak International Limited.**

1. (1) Peak International Limited ("the Company") is hereby designated for the purpose of the Insurance Business (Financial Guarantee Insurance: Special Provisions) (Guernsey) Law, 1996<sup>(b)</sup> ("the Law").

(2) In consequence of subsection (1) Peak International Limited is a "designated FGI" for the purposes of the Law; and it is hereby declared that the licensing and supervision of Peak International Limited pursuant to the Law and this Ordinance are statutory functions of the Commission for the purposes of section 2(3)(b) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>c</sup>.

**Conditions precedent to commencement of business.**

2. The Company is not entitled to commence financial guarantee insurance business until the Company -

(a) has been granted a licence to carry on financial guarantee insurance business under this Ordinance; and

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<sup>a</sup> on Article 5 of Billet d'État No. VI of 1997.

<sup>b</sup> Order in Council No. XIII of 1996.

<sup>c</sup> Ordres en Conseil Vol. XXX, p.243.

- (b) satisfies the Commission that it has an issued and paid up share capital, including share premium where applicable, of at least seventy-five million United States dollars

### *Licensing*

#### **Licence to carry on business.**

3. (1) The Company shall not carry on financial guarantee insurance business otherwise than under, and in accordance with the conditions of, a licence granted to the Company under this Ordinance.

(2) An application for a licence under this Ordinance shall be made to the Commission in such form as the Commission may determine, and accompanied by such fee as the Committee, after consultation with the Commission, may prescribe.

(3) The Commission shall not grant an application for a licence under this Ordinance unless the Company has -

- (a) disclosed to the satisfaction of the Commission such details as the Commission has requested of it in relation to all persons who have, or who will have at the date when the Company commences financial guarantee insurance business, any proprietary, financial or other interest in, or connection with, the Company;
- (b) filed with the Commission such application form as may be determined by the Commission, including a plan of

operation detailing the types and projected diversification of financial guarantees that will be issued by the Company, the underwriting procedures that will be followed by the Company, the investment policies that will be followed by the Company, and such other matters as may be specified by the Commission;

- (c) filed with the Commission financial projections of the Company for the first three years of its operation;
- (d) given evidence satisfactory to the Commission that it has satisfied the requirements of section 2(b).

(4) If the Commission is satisfied as to all of the matters referred to in subsection (3) it may grant a licence to the Company to carry on financial guarantee insurance business in accordance with the Law, this Ordinance, and the conditions of the licence.

**Licence conditions.**

4. (1) If the Commission grants a licence under this Ordinance it shall be subject to the conditions:

- (a) that the Company shall obtain the Commission's prior approval for the appointment of its directors, general representative, senior executive officers, and auditors;
- (b) that the Company shall obtain the Commission's prior approval for all material changes to its plan of operation;

- (c) that the Company shall submit to the Commission a financial and insurance summary containing such information as the Commission may require, including sufficient information to enable the Commission to judge the adequacy of the reserves maintained in accordance with sections 11, 12 and 13 and compliance with the limits specified in sections 14 and 15, and that such summary be submitted to the Commission monthly or at such other intervals as the Commission may from time to time determine;
- (d) that, unless the issued share capital of the Company is listed and traded on a recognised stock exchange, the Company shall seek the Commission's prior approval for any change in the beneficial or registered ownership of any part of the Company's issued share capital, or for any change in the identity of persons having any proprietary, financial or other interest in, or connection with, the Company;
- (e) that the Company shall notify the Commission within 21 days of the Company receiving notice that any shareholder, or any number of connected shareholders, has or have any interest in the issued share capital of the Company representing in excess of fifteen per cent of that issued share capital;
- (f) that the Company shall pay such further annual and other fees to the Commission as may from time to time

be prescribed by the Committee after consultation with the Commission;

and to such other conditions as the Commission may impose under this Ordinance.

(2) The Commission may at any time on or after the grant of a licence under this Ordinance impose such additional conditions as it thinks fit, provided that such additional conditions shall not affect the performance by the Company of any financial guarantee insurance obligations already lawfully entered into, and subsisting immediately before their imposition.

**Issue, duration, endorsement and return of licence.**

5. (1) On granting the Company's application under section 3 the Commission shall issue to the Company a licence in such form and containing such information as the Commission may determine.

(2) Subject to section 7 the licence shall be perpetual.

(3) The licence issued pursuant to subsection (1) shall be delivered by the Company to the Commission:

(a) upon its cancellation ; and

(b) wherever any condition has been imposed on the licence, so as to permit the Commission to endorse the licence; and

(c) whenever so required by the Commission.

(4) The licence shall remain the property of the Commission.

**Suspension of licence.**

6. (1) The Commission may suspend the licence granted to the Company under this Ordinance if at any time it appears to the Commission that the Company has contravened any provision of the Law or of this Ordinance, or any condition of the licence, and during the period of the suspension the Company shall not transact new financial guarantee insurance.

(2) The Commission shall forthwith serve notice of any suspension on the Company and the suspension shall take effect immediately on service of the notice.

(3) The Commission shall within 48 hours of being required by the Company so to do, give further notice to the Company of the reasons for its decision to suspend the Company's licence.

(4) The Company may appeal against any decision of the Commission to suspend its licence in the manner set out in section 9.

**Cancellation of licence.**

7. (1) The Commission may cancel the licence of the Company if it appears to the Commission that:

- (a) the Company has contravened the Law or this Ordinance, or any condition of the licence; or
- (b) a person has become interested in shares in the Company, or has otherwise acquired a proprietorial, financial or other interest in or connection with the Company, without the prior consent of the

Commission, in such circumstances as to involve a contravention of the condition referred to in section 4(1)(d); or

- (c) a person has acquired an interest representing more than 15 per cent of the issued share capital of the Company, or of any holding company of the Company, without the approval of the Commission;
- (d) the Commission has been provided with false, misleading, deceptive or inaccurate information by or on behalf of the Company in connection with its application for a licence; or
- (e) the interests of policyholders or potential policyholders of the Company are in any way threatened, whether by the manner in which the Company is conducting or proposes to conduct its business or for any other reason; or
- (f) any fee prescribed to be paid by the Company under this Ordinance has not been paid.

(2) The cancellation of the licence shall not affect the liability of the Company in respect of, or the validity of, any policy of insurance written by the Company before the date of the cancellation.

**Representations prior to cancellation, etc.**

8. (1) Subject to subsection (2) the Commission shall not cancel the licence or impose any additional conditions on the licence after its issue without first serving a notice on the Company stating:

- (a) that the Commission is considering cancellation, or additional conditions, for reasons which will be furnished in writing if the Company or any director of the Company so requests; and
- (b) that the Company may within 28 days of the date of service of the notice make written or oral representations to the Commission in such manner as the Commission may from time to time resolve; and
- (c) that in the event of the Commission cancelling, or imposing the additional condition on, the licence, the Company will be entitled to appeal under section 9;

and the Commission must consider any representations made in response to that notice.

(2) Subsection (1) does not apply if the Commission considers it essential for the protection of policyholders or potential policyholders of the Company, or of the reputation of the Bailiwick, that the cancellation or additional conditions should take effect immediately, and if that fact is stated in the notice under subsection (3).

(3) No cancellation or additional condition shall take effect until notice thereof is served on the Company.

**Appeals.**

9. (1) The Company may appeal to the Court against any decision of the Commission

(a) to impose an additional condition after the issue of the licence under section 4(2); or

(b) to suspend the licence under section 6; or

(c) to cancel the licence under section 7,

on the grounds that the decision is ultra vires or is an unreasonable exercise of the powers of the Commission.

(2) An appeal under this section must be instituted by a summons stating the grounds and material facts on which the Company relies and served on the Chairman of the Commission within 14 days of service of the notice under section 6(2) or section 8(3).

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

(4) On an appeal under this section the Court may quash or confirm the decision of the Commission against which the appeal is brought, or may substitute any other decision which the Commission could have made.

(5) Subject to subsection (6), from the time of the institution of an appeal under this section the decision appealed against, if made under section 6 or 7, shall not operate so as to:

- (i) require the Company to do anything which it would not otherwise have been required to do; or
- (ii) prohibit the Company from doing anything which it could otherwise lawfully have done

unless and until the decision is confirmed by the Court or the appeal is withdrawn or is dismissed for want of prosecution.

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

(7) The decision of the Court under this section shall be final as to any question of fact but an appeal from such a decision shall lie to the Court of Appeal on any question of law within the same period and in the same manner as may be prescribed by any order of the Royal Court under section 51(6) of the Insurance Business (Guernsey) Law, 1986<sup>d</sup>.

**Resources, reserves and exposure limits**

**Surplus to policyholders.**

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<sup>d</sup> Ordres en Conseil Vol. XXIX, p.214.

**10.** The Company shall after it has commenced business at all times maintain a minimum surplus to policyholders of at least sixty-five million United States dollars or such higher figure as may from time to time be required by the Commission; and this requirement shall be deemed a condition of the Company's licence imposed in accordance with section 4.

**Contingency reserves.**

**11.** (1) The Company shall establish and maintain contingency reserves for the protection of insureds and claimants against the effects of excessive losses occurring during adverse economic cycles in accordance with this section.

(2) With respect to financial guarantees of municipal obligation bonds, infrastructure bonds, special revenue bonds, industrial development bonds and utility first mortgage obligations:

- (a) the Company shall establish and maintain a contingency reserve for all such insured issues in each financial year for each category as listed in paragraph (b) of this subsection;
- (b) the total contingency reserve required under this subsection shall be the greater of 50 per cent of premiums written for each such category, or the following amount for each such category:
  - (i) municipal obligation bonds, 0.55 per cent of principal guaranteed;
  - (ii) infrastructure bonds, special revenue bonds, and obligations demonstrated to the satisfaction of

the Commission to be the functional equivalent thereof, 0.85 per cent of principal guaranteed;

(iii) investment grade industrial development bonds secured by collateral or having a term of seven years or less, and utility first mortgage obligations, 1.0 per cent of principal guaranteed;

(iv) other investment grade industrial development bonds, 1.5 per cent of principal guaranteed;

(v) all other industrial development bonds, 2.5 per cent of principal guaranteed; and

(c) contributions to the contingency reserve required by this subsection, equal to one-eightieth of the total reserve required, shall be made each quarter for 20 years, provided that contributions may be discontinued so long as the total reserve for all categories listed in items (i) to (v) of paragraph (b) of this subsection exceeds the percentages otherwise required by those items when applied against unpaid principal.

(3) With respect to all other financial guarantees written by the

Company:

(a) the Company shall establish and maintain a contingency reserve for all such insured issues in each financial year for each category as listed in paragraph (b) of this subsection;

- (b) the total contingency reserve required under this subsection shall be the greater of 50 per cent of premiums written for each such category, or the following amount for each such category:
- (i) investment grade obligations, secured by collateral or having a term of seven years or less, 1.0 per cent of principal guaranteed;
  - (ii) other investment grade obligations, 1.5 per cent of principal guaranteed;
  - (iii) non-investment grade consumer debt obligations, 2.0 per cent of principal guaranteed;
  - (iv) non-investment grade asset-backed securities, 2.0 per cent of principal guaranteed;
  - (v) other non-investment grade obligations, 2.5 per cent of principal guaranteed;
- (c) contributions to the contingency reserve required by this subsection, equal to one sixtieth of the total reserve required, shall be made each quarter for 15 years, provided that contributions may be discontinued so long as the total reserve for all categories listed in items (i) to (v) of paragraph (b) of this subsection exceeds the percentages required by those items when applied against unpaid principal.

(4) Contingency reserves required by subsections (2) and (3) may be established and maintained

(a) net of reinsurance, provided that the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the Company reduces its contingency reserve, and that the reinsurance agreement otherwise satisfies the requirement of section 23;

(b) net of refundings and refinancings, to the extent that the refunded or refinanced issue is paid off or secured by obligations which are directly payable or guaranteed by the United States Government or, if an obligation is denominated in a currency other than United States dollars, by the government of a member of the OECD or by the government of another sovereign state or territory approved by the Commission for the purpose of this paragraph; and

(c) net of securities in a unit trust, investment trust or mutual fund, which have been issued by or sold from that trust or fund without financial guarantee insurance.

(5) The contingency reserves may be released in the same manner in which they were established, and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

- (a) with the prior written approval of the Commission;
  - (i) in the case of the categories of guarantees subject to subsection (2), if the actual incurred losses for the preceding 12 months exceed 35 per cent of earned premiums; or
  - (ii) in the case of the categories of guarantees subject to subsection (3), if the actual incurred losses for the preceding 12 months exceed 65 per cent of earned premiums;
- (b) upon the Commission being satisfied that the amount carried is excessive in relation to the Company's outstanding obligations under its financial guarantees:
  - (i) in the case of the contingency reserve applicable to the categories of guarantees subject to subsection (2), if it has been in existence for less than 40 quarters; or
  - (ii) in the case of the contingency reserve applicable to the categories of guarantees subject to subsection (3), if it has been in existence for less than 30 quarters;
- (c) upon 30 days prior written notice to the Commission -

(i) in the case of the contingency reserve applicable to the categories of guarantees subject to subsection (2), if it has been in existence for 40 quarters or longer, or

(ii) in the case of the contingency reserve applicable to the categories of guarantees subject to subsection (3), if it has been in existence for 30 quarters or longer,

upon the Commission being satisfied that the amount carried is excessive in relation to the Company's outstanding obligations under its financial guarantees.

(6) The contingency reserves shall be invested only in admitted assets as defined in Schedule 1.

(7) Contingency reserves required pursuant to this section in regard to obligations denominated otherwise than in United States dollars shall be established and adjusted based upon the then current foreign exchange rates at least quarterly, or at such shorter intervals as the Commission may from time to time determine.

**Loss reserves.**

**12.** (1) The Company shall establish and maintain, on the basis of a case by case review applied to each individual financial guarantee or on such other basis as may be directed by the Commission, loss reserves net of collateral, for claims reported and unpaid, in a manner consistent with generally accepted accounting practices.

(2) A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the Company as of the date of the computation of any such reserves; and the discount rate shall be adjusted at the end of each financial year, or such shorter periods as the Commission may from time to time determine.

(3) If the insured principal and interest on a defaulted issue of obligations due and payable during any three years following the date of default exceeds 10 per cent of the aggregate of surplus to policyholders, uncalled share capital, and contingency reserves, its loss reserve established in accordance with this section shall be supported by a report from an independent source acceptable to the Commission.

(4) Loss reserves required pursuant to this section in regard to obligations denominated otherwise than in United States dollars shall be established and adjusted based upon the then current foreign exchange rates at least quarterly, or at such shorter intervals as the Commission may from time to time determine.

**Unearned premium reserve.**

13. (1) The Company shall establish and maintain an unearned premium reserve net of reinsurance in respect of all financial guarantee premiums.

(2) Where guarantee insurance premiums are paid on an instalment basis an unearned premium reserve shall be established and maintained net of reinsurance computed on a daily or monthly pro rata basis.

(3) All other financial guarantee reinsurance premiums written shall be earned in proportion with the expiration of exposure or by such other methods that may from time to time be approved by the Commission.

**Overall exposure limits.**

14. The Company must at all times maintain a surplus to policyholders plus uncalled share capital plus contingency reserves amounting in the aggregate to not less than the sum of:

- (A) (a) 0.3333 per cent [or 1/300th] of the aggregate net liability under guarantees of municipal bonds, special revenue bonds and infrastructure bonds, including obligations which the Commission is satisfied are the functional equivalent thereof, and investment grade utility first mortgage obligations; plus
- (b) 0.6666 per cent [or 1/150th] of the aggregate net liability under guarantees of investment grade asset-backed securities; plus
- (c) 1.0 per cent [or 1/100th] of the aggregate net liability under guarantees, secured by collateral or having a term of seven years or less, of:
  - (i) investment grade industrial development bonds, or
  - (ii) other investment grade obligations; plus

- (d) 1.5 per cent [or 1/66.67th] of the aggregate net liability under guarantees of other investment grade obligations; plus
- (e) 2.0 per cent [or 1/50th] of the aggregate net liability under guarantees of:
  - (i) non-investment grade consumer debt obligations, and
  - (ii) non-investment grade asset-backed securities; plus
- (f) 2.5 per cent [or 1/40th] of the aggregate net liability under guarantees of non-investment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of 80 per cent or less; plus
- (g) 4.0 per cent [or 1/25th] of the aggregate net liability under guarantees of other non-investment grade obligations; and
- (h) if the amount of collateral required by subparagraph (c) of this paragraph is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in subparagraph (d) of this paragraph; and

**(B)** Surplus to policyholders determined by the Commission to be adequate to support the writing of residual value insurance, fidelity and surety insurance and credit insurance, if the Company has elected, and the Commission has authorised the Company, to transact such kinds of insurance.

**Single risk exposure limits.**

**15.** The Company shall limit its exposure to loss on any one risk insured by policies providing financial guarantee insurance, net of collateral and reinsurance, as follows:

**(A)** in the case of municipal obligation bonds, special revenue bonds, infrastructure bonds and obligations demonstrated to the satisfaction of the Commission to be the functional equivalent thereof:

(a) the insured average annual debt service with respect to a single entity and backed by a single revenue source shall not exceed 10% of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve; except that in the case of a payment obligation of, or guaranteed by, a governmental unit which is rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the Commission, and provided that the payment obligation is not limited to a specific source of income but is a general obligation, the insured unpaid principal issued or guaranteed by that entity shall not

exceed 25% of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve; and

- (b) the insured unpaid principal issued by a single entity and backed by a single revenue source shall not exceed 75% of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve; except that in the case of a payment obligation of, or guaranteed by, a governmental unit which is rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the Commission, and provided that the payment obligation is not limited to a specific source of income but is a general obligation, the insured unpaid principal issued or guaranteed by that entity shall not exceed 100% of the surplus to policyholders plus uncalled share capital plus contingency reserve.

**(B)** for each issue of asset-backed securities issued by a single entity, and for each pool of consumer debt obligations, the lesser of:

- (a) insured average annual debt service; or
- (b) insured unpaid principal (reduced by the extent to which the unpaid principal of the supporting

assets exceeds the insured unpaid principal)  
divided by nine

shall not exceed 10% of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve, provided that no asset in the pool supporting the asset-backed securities exceeds the single risk limits prescribed in paragraph (E) of this section, if directly guaranteed; and provided further that, if the issuer of such insured asset-backed securities is a special purpose corporation, special purpose trust, or other special purpose entity, and such issuer has indebtedness outstanding with respect to any other pool of assets, either such other indebtedness must be entitled to the benefits of a financial guarantee policy of the same insurer, or such other indebtedness must : (i) be fully subordinated to the insured obligation with respect to, or be non-recourse with respect to, the pool of assets that supports the insured obligation, (ii) be non-recourse to the issuer other than with respect to the asset pool securing such other indebtedness and proceeds in excess of the proceeds necessary to pay the insured obligation ("excess proceeds") and (iii) not constitute a claim against the issuer to the extent that the asset pool securing such other indebtedness or excess proceeds is sufficient to pay such other indebtedness;

- (C) for obligations issued by a single entity and secured by commercial real estate, and not meeting the definition of asset-backed securities, the insured unpaid principal

less 50 per cent of the appraised value of the underlying real estate shall not exceed 10 per cent of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve;

- (D)** for utility first mortgage obligations, the insured average annual debt service shall not exceed 10 per cent of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve; except that in the case of a payment obligation of, or guaranteed by, a governmental unit which is rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the Commission, and provided that the payment obligation is not limited to a specific source of income but is a general obligation, the insured unpaid principal issued or guaranteed by that entity shall not exceed 25 per cent of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve;
- (E)** for all other policies providing financial guarantee insurance with respect to obligations issued by a single entity and backed by a single revenue source, the insured unpaid principal shall not exceed 10 per cent of the aggregate of the surplus to policyholders plus uncalled share capital plus contingency reserve.
- (F)** for the purpose of calculating the single loss limits specified in this section obligations denominated otherwise than in United States dollars shall be

established and adjusted based upon the then current foreign exchange rates at least quarterly, or at such shorter intervals as the Commission may from time to time determine.

**Excess of limits.**

16. If the Company at any time exceeds any limitation prescribed by section 14 or 15 or by section 21(2) the Company shall within 30 days after such limitation is breached, submit a written plan to the Commission detailing the steps that it will take or has taken to reduce its exposure to loss to no more than the permitted amounts; and if after notice the Commission determines

- (a) that the Company has exceeded any limitation prescribed by section 14 or 15, it may order the Company to cease transacting any new financial guarantee insurance until its exposure to loss no longer exceeds such limitations;
- (b) that the Company has exceeded the limitation prescribed by section 21(2), it may order the Company to limit its writing of the types of guarantees permitted under section 21(1)(b) to investment grade obligations until such time as it complies with that limitation.

**Accounts and audit**

**Preparation and filing of annual accounts.**

17. (1) The Company accounts shall be drawn up to 31st December in each year, which shall be deemed to be the Company's financial year for the purposes of the Ordinance.

(2) The Company shall prepare in respect of each financial year such accounts, in such form and manner, as the Commission may direct, and shall file those accounts with the Commission within three months of the end of that financial year.

**Audit.**

**18.** The accounts required to be prepared by virtue of section 17 shall be audited by an auditor approved by the Commission, in accordance with any directions given by the Commission; and the report of that auditor on those accounts in accordance with this Ordinance and any such directions shall be submitted to the Commission within such period as the Commission may direct.

**Notification in respect of auditors.**

**19.** (1) The Company shall forthwith give notice in writing and explanation to the Commission:

- (a) if the Company proposes to give special notice to its shareholders of a resolution removing an auditor before the expiration of his term of office,
- (b) if the Company gives notice to its shareholders of a resolution replacing an auditor at the expiration of his term of office, or
- (c) if a person ceases to be an auditor of the Company otherwise than pursuant to such a resolution.

(2) The auditor of the Company appointed under or in accordance with any enactment relating to companies in force in Guernsey must forthwith give notice in writing and explanation to the Commission if he:

(a) resigns before, or does not seek re-appointment upon, the expiration of his term of office;

(b) decides to include in his report on the Company's accounts any qualification as to any matter.

**Communications by auditors to Commission.**

20. (1) It is the duty of any auditor of the Company to communicate to the Commission any matter to which this section applies and which the auditor has reasonable cause to believe is or may be relevant for determining whether the Commission might exercise any power under the Law or this Ordinance in relation to the Company.

(2) No duty to which an auditor of the Company is subject is contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by the Commission, any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission.

(3) This section applies to any matter of which a person becomes aware in his capacity as auditor and which relates to the business or affairs of the Company or any affiliate thereof.

**Conduct of business**

**Restrictions on business.**

**21.** (1) Notwithstanding anything contained in the Memorandum or Articles of Association of the Company or in the Companies Law, the Company is prohibited from carrying on any description of insurance business other than:

- (a) the classes of financial guarantee insurance business set out in section 25(1) of the Law and not excluded from the general ambit of a licence by section 25(2) of the Law;
- (b) the insurance or reinsurance of the timely payment of debt instruments or other monetary obligations in any of the following categories:
  - (i) municipal obligation bonds;
  - (ii) special revenue bonds;
  - (iii) industrial development bonds;
  - (iv) infrastructure bonds;
  - (v) corporate obligations;
  - (vi) partnership obligations;
  - (vii) asset-backed securities, trust certificates and trust obligations;
  - (viii) instalment purchase agreements executed as a condition of sale;

- (ix) consumer debt obligations;
  - (x) utility first mortgage obligations;
  - (xi) any other debt instrument or financial obligation which the Commission determines and notifies to the Company to be substantially similar to any of the foregoing, or which the Commission otherwise approves in writing;
- (c) any class of insurance business set out in section 25(2) of the Law in respect of which the Commission has given express prior written consent under this paragraph.

(2) At least 95 per cent of the Company's outstanding total liability on the kinds of obligations enumerated in subparagraphs (i), (ii), (iii) and (iv) of paragraph (1)(b) must be investment grade.

(3) Subject to the provisions of the Law and this Ordinance the Company shall have full power, authority and capacity, as part of its permitted insurance business, to loan or invest its funds and assets; and may buy, sell, hold title to, possess, occupy, pledge, convey, manage, protect, insure and deal with its investments, assets and liabilities, including the use of derivatives; and may appoint, and delegate such functions to, one or more investment managers.

(4) Save for activities incidental to its permitted insurance business, the Company is prohibited from carrying on any business other than insurance business.

**Policy terms.**

22. (1) A summary of each policy and any amendment thereto written or issued by the Company must be filed with the Commission before or within thirty days of its first issue.

(2) The Company must notify the Commission of its intention to issue a policy of a class that would be outside the terms of the latest business plan submitted by the Company not less than seven days before the date of its issue.

(3) Every policy issued by the Company must provide that in the event of a payment default or insolvency of the obligor there shall be no acceleration of the payment required to be made under the policy unless the acceleration is at the sole option of the Company.

(4) Every consumer debt obligations guarantee policy issued by the Company must provide that all coverage under it terminates upon sale or transfer of the underlying consumer debt obligation to any transferee not insured by the Company under a similar policy.

(5) Every policy issued by the Company must include such minimum policy provisions as may be required by the Commission as necessary or appropriate to protect policyholders, or claimants of obligees or indemnitees.

**Reinsurance.**

23. (1) In calculating its assets and liabilities for the purpose of determining any reserves or risk limits imposed on the Company the Company may take the benefit of any reinsurance policy placed with a reinsurer previously notified to and approved by the Commission, and subject to the Company complying with any directions given by the Commission, but not otherwise.

(2) The Company must file a summary of each of its reinsurance policies with the Commission within 30 days from the date the reinsurance policy takes effect.

(3) The Company must supply to the Commission such information as the Commission may require for the purpose of considering the acceptability of reinsurers.

**Investment restrictions.**

**24.** (1) The Company must at all times maintain the minimum surplus to policyholders required by section 10 invested in tier one admitted assets.

(2) The Company must at all times maintain not less than 70 per cent of loss reserves and 50 per cent of unearned premium reserves invested in tier one and tier two admitted assets.

(3) For the purposes of calculating surplus to policyholders, and the reserves and limits required by sections 11 to 16 inclusive, only those assets of the Company which qualify as admitted assets may be taken into account.

**Prohibition on offering inducements.**

**25.** (1) The Company shall not pay or offer any commission, or make or offer any gift, to any employee, agent or representative of any potential purchaser of a financial guarantee insurance policy as an inducement to the purchase of such a policy.

(2) If the Company contravenes subsection (1) it is liable on summary conviction to a fine not exceeding £500,000.

- (3) It is hereby declared for the avoidance of argument that
- (a) the possibility, or institution, of criminal proceedings in respect of a contravention of subsection (1) does not affect the powers of the Commission to take action under section 4(2), 6 or 7, or the right of any person to pursue a civil claim; but
  - (b) a breach of subsection (1) does not in itself render void any financial guarantee insurance policy issued by the Company.

**Annual return, plan of operation, and fee.**

26. (1) The Company shall, during the first three months of each calendar year following the year in which it is first licensed under this Ordinance, submit for the approval of the Commission an annual return in respect of the preceding calendar year in such form and containing such particulars as the Commission may from time to time direct.

(2) The Company shall, during the last month of each calendar year -

- (a) submit for the approval of the Commission a plan of operation detailing the matters referred to in section 3(3)(b) for the new calendar year, in such form and containing such particulars as the Commission may from time to time direct; and
- (b) pay to the Commission such annual fee as may be prescribed under section 4(1)(f).

**General representative.**

27. (1) The Company shall appoint as the Company's general representative, to act generally on behalf of the Company and to accept service of any document on behalf of the Company either -

- (a) a person who is both:
  - (i) an executive director of the Company who is ordinarily resident in Guernsey, or if no such director of the Company is ordinarily so resident an employee or agent of the Company who is ordinarily resident in Guernsey; and
  - (ii) approved by the Commission as a fit and proper person to act as the Company's general representative; or
- (b) an authorised insurance manager within the meaning of the Insurance Business (Guernsey) Law, 1986(d).

(2) Without prejudice to the generality of his functions under subsection (1), the general representative of the Company shall be responsible (but without absolving the Company of its own responsibility) for making any return, depositing any accounts, reports and other documents and furnishing any information which, by or under any provision of this Ordinance, he or the Company is required to make, deposit or furnish.

(3) The general representative shall not resign his position (nor shall the Company remove its general representative) unless

- (a) he or the Company has given 60 days notice to the Commission in writing, or such lesser period of notice as may be accepted by the Commission upon application by the Company, and
- (b) the Company has appointed a person in accordance with subsection (1) as its new general representative within that period.

*Supplementary provisions*

**Meaning of "collateral" and other technical terms.**

28. (1) For the purposes of this Ordinance "collateral" is to be construed in accordance with Schedule 2.

(2) Other technical terms used in this Ordinance are to be construed in accordance with Schedule 3.

**General interpretation and construction.**

29. (1) This Ordinance is to be construed as one with the Law; and in particular, but without prejudice to the generality of the foregoing, words and phrases defined in the Law have, unless the context otherwise requires or the contrary is stipulated, the same meanings in this Ordinance.

(2) In this Ordinance, unless the context otherwise requires -

for "**admitted assets**" see Schedule 1;

**"affiliate"**, in relation to a given body, means a person other than a government or wholly owned government entity which, directly or indirectly, owns at least 20 per cent but less than 50 per cent of that body or which is at least 20 per cent but less than 50 per cent, directly or indirectly, owned by that body;

for **"aggregate net liability"** see Schedule 3;

for **asset-backed securities**" see Schedule 3;

for **"average annual debt service"** see Schedule 3;

for **"collateral"** see Schedule 2;

for **"commercial real estate"** see Schedule 3;

for **"the Commission"** and **"the Committee"** see the Law;

for **"the Companies Law"** see the Law;

**"the Company"** means the company registered on the records of the Island of Guernsey with limited liability, the registration number 30977, and the name **"Peak International Limited"**;

for **"consumer debt obligations guarantees"** see Schedule 3;

**"contingency reserves"** means the additional liability reserves established in accordance with section 11;

**"contravention"** includes failure to comply;

for "**the Court**" see the Law;

for "**credit insurance**" and "**credit unemployed insurance**" see the Law;

for "**fidelity and surety insurance**" see the Law;

for "**financial guarantee insurance**" and "**financial guarantee insurance business**" see the Law;

"**financial year**" in relation to the Company means a year ending on 31st December;

for "**general representative**" see the Law;

"**governmental unit**" means

- (a) a nation or state which is a member of the OECD or which has been approved by the Commission, and any province, territory, county, city, municipality or political subdivision thereof, and
- (b) any public agency or instrumentality of such a nation, state, province, territory, county, city, municipality or political subdivision;

for "**industrial development bond**" see Schedule 3;

for "**infrastructure bond**" see Schedule 3;

for "**insurable risk**" see Schedule 3;

"**insurance business**" has the same meaning as in the Insurance Business (Guernsey) Law, 1986(**d**);

for "**investment grade**" see Schedule 3;

"**the Law**" means the Insurance Business (Financial Guarantee Insurance : Special Provisions) (Guernsey) Law, 1996(**b**);

"**loss reserve**" means the reserve maintained by the Company in accordance with section 12;

for "**municipal bond**" and "**municipal obligation bond**" see Schedule 3;

for "**OECD**" see the Law;

"**this Ordinance**" includes any subordinate legislation or licence made or issued under this Ordinance;

"**plan of operation**" means the plan of operation filed with the Commission pursuant to section 3(3)(b) including any amendments or revisions thereof approved by the Commission as required by the Company's licence and by section 26(2)(b);

"**prescribed**" means specified by regulations made by the Committee under this Ordinance in accordance with section 2(6) of the Law;

**"recognised stock exchange"** means any market for the buying and selling of securities which is for the time being recognised in writing by the Commission for the purposes of this Ordinance;

**"reinsurance"**, except in section 21(1)(a) and Schedule 1, means cessions qualifying for credit under section 23(1);

for **"residual value insurance"** see the Law;

for **"special revenue bond"** see Schedule 3;

**"subsidiary"** has the same meaning as in Schedule 2 to the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>e</sup>;

for **"surplus to policyholders"** see Schedule 3;

for **"tier one admitted assets"** and **"tier two admitted assets"** see Schedule 1;

**"uncalled share capital"** means so much of the issued share capital of the Company, including share premium, as equals the aggregate amount remaining uncalled and unpaid;

**"unearned premium reserve"** means the unearned premium reserve maintained by the Company in accordance with section 13;

for **"utility first mortgage obligation"** see Schedule 3;

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<sup>e</sup> Order in Council No. XIII of 1994.

(3) Where a word or expression is defined or is to be construed in accordance with any provision of this Ordinance, related words or expressions have corresponding meanings.

(4) Unless the context otherwise requires -

(a) a reference in this Ordinance to any other enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment;

(b) a reference in this Ordinance to a provision by number and/or letter alone is to the provision so numbered and/or lettered in this Ordinance;

(c) a reference in a provision of this Ordinance to a subsection or paragraph by number or letter alone is to the subsection or paragraph so numbered or lettered within that provision.

**Citation.**

30. This Ordinance may be cited as the Financial Guarantee Insurance (Peak International Limited) Ordinance, 1997.

**Commencement.**

31. This Ordinance shall come into force on 1st May 1997.

## SCHEDULE 1

Sections 11(6), 12(2), 24

### ADMITTED ASSETS

"Admitted assets" for the purposes of this Law are assets falling within any of the following categories or any combination thereof:

- (a) Cash in hand and on deposit with, or certificates of deposit issued by, any bank licensed by the Commission, or other Bank or financial institution regulated by any federal or state agency of the United States of America or regulated by any agency or organisation of any member of the OECD;
- (b) bonds or other evidence of indebtedness of governmental units in the United States of America or any member of the OECD, including asset-backed securities and mortgage-backed securities;
- (c) bonds or other evidence of indebtedness of international development organisations and supranational institutions of which three or more members of the OECD are members;
- (d) loans secured by mortgages, trust deeds or other security interests in tangible property located in the United States of America or Canada, or secured by insurance against default issued by a government insurance corporation of the United States of America or Canada or an insurer (other than the Company) authorised to do business in New York or in Guernsey;

- (e) Eurobonds of such description as may, from time to time, be prescribed by regulations made by the Committee under this paragraph;
- (f) securities quoted on a stock exchange in a member of the OECD;
- (g) net investment income receivable in relation to the assets mentioned in items (a), (b), (c) and (d) of this schedule;
- (h) premiums receivable;
- (i) reinsurance balances receivable in respect of reinsurance policies satisfying section 23;
- (j) accounts receivable, net of provision for bad and doubtful debts;
- (k) other classes of assets and investments from time to time prescribed by the Commission;
- (l) investments not otherwise permitted by this Schedule but not otherwise specifically prohibited by the Law or this Ordinance, to the extent only that such investments in the aggregate do not exceed in value 5% of the first \$500,000,000 of the Company's total assets plus 10% of the Company's total assets in excess of \$500,000,000.

For the purposes of the restrictions in section 24 admitted assets are categorised into the following tiers:

**"tier one admitted assets"**                      those assets and investments listed in paragraphs (a) to (c) inclusive

**"tier two admitted assets"** admitted assets other than tier one or three admitted assets

**"tier three admitted assets"** those assets and investments listed in paragraphs (f), (k) and (l).

Admitted assets shall be valued as at the date of each summary to be submitted to the Commission in accordance with the Company's licence conditions, as follows:

- (a) admitted assets having a fixed term and rate of interest, if not in default as to principal or interest, shall be valued:
  - (i) if purchased at par, at their par value,
  - (ii) if purchased above or below par, at a value determined to amortise the difference above or below par over the life of the asset to maturity.
- (b) all other admitted assets shall be valued at their current market value, or on such other basis as may from time to time be specified by the Commission;
- (c) admitted assets denominated otherwise than in United States dollars shall be valued and converted into United States dollars at the current foreign exchange rates prevailing at the date of valuation.

## SCHEDULE 2

Sections 11(2), 12(1), 14, 15, 28(1)

### COLLATERAL

#### **Cash and instruments capable of constituting collateral.**

1. (1) Cash in United States dollars, or in the currency of any jurisdiction in which the Company has written financial guarantee insurance.

(2) The scheduled cash flow from obligations

(a) which are not callable; and

(b) where the underlying obligations cannot be prepaid in whole or in part by the original borrowers; and

(c) which are directly payable or guaranteed by, or backed by the full faith and credit of, the government or the central bank of the United States of America or United Kingdom or any other country which is a member of the OECD or which has been approved by the Commission; and

(d) which are scheduled to be received on or prior to the date of scheduled debt service on the insured obligation.

(3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations.

- (4) The face amount of a letter of credit which:
- (a) is irrevocable; and
  - (b) provides for payment under the letter of credit under all instances in which payment under a financial guarantee insurance policy is required; and
  - (c) is issued, presentable and payable either:
    - (i) at an office of the letter of credit issuer located in Guernsey or the United Kingdom; or
    - (ii) at an office of the letter of credit issuer located in any other jurisdiction in which the trustee or paying agent for the insured obligation is located; and
  - (d) contains a statement which either:
    - (i) identifies the Company and any successor by operation of law, including any liquidator or administrator, as the beneficiary; or
    - (ii) identifies the trustee or the paying agent for the insured obligation as the beneficiary; and
  - (e) contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of such issuer and is in no way

contingent upon reimbursement with respect thereto;  
and

- (f) contains an issue date and a date of expiration; and
- (g) either:
  - (i) has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guarantee policy; or
  - (ii) provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended and a substitute letter of credit or alternative collateral meeting the requirements of this definition is not provided;
- (h) states that it is governed by the laws of Guernsey, or England and Wales, or by the 1983 or 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500) or any successor Revision if approved by the Commission, and contains a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences

described in Article 19 of Publication 400 or 500 occurs; and

(i) is issued by a bank, trust company, building society, savings and loan association, other licensed deposit taking institution, or other financial institution approved by the Commission, which:

(i) is constituted under the laws of a member country of the OECD or of any other country approved by the Commission, and is domiciled in a country having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the Commission; and

(ii) has (or is the principal operating subsidiary of a bank holding company which has) a long-term debt rating of at least investment grade; and

(iii) is not (unless otherwise approved by the Commission) a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if such trustee or paying agent is the named beneficiary of the letter of credit.

**Qualifying condition for collateral.**

2. None of the cash or instruments referred to in paragraph 1 of this Schedule qualifies as collateral for the purposes of this Ordinance unless it is:

- (a) deposited with the Company; or
- (b) held in trust by a trustee or custodian acceptable to the Commission for the benefit of the Company; or
- (c) held in trust pursuant to a bond or trust arrangement for the benefit of security holders in the form of funds for the payment of the Company's obligations, sinking funds or other reserves which may be used for the payment of insured obligations and trustee and other administrative fees on a first priority basis, established and continually maintained pursuant to the bond or trust arrangement by a trustee acceptable to the Commission.

## SCHEDULE 3

Section 28(2)

### GLOSSARY OF TECHNICAL TERMS

**"admitted assets"** : see Schedule 1.

**"aggregate net liability"** : the aggregate amount of insured unpaid principal, interest and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance ceded and less collateral.

**"asset-backed securities"** : securities or other financial obligations of an issuer provided that:

(1) the issuer

- (a) is a special purpose corporation, special purpose trust, or other special purpose entity; or
- (b) if the securities or other financial obligations constitute an insurable risk, is a bank, trust company or other financial institution organised in a country other than the United States which is a member of the OECD, or in any other country approved by the Commission, and is regulated by the central bank or other regulatory authority of the country in which it is organised; or
- (c) if the securities constitute an insurable risk, is a bank, trust company or financial institution organised in the United States, the deposits in which are insured by the Bank

Insurance Fund or the Savings Insurance Fund (or any successor thereto); and

- (2) a pool of assets:
  - (a) has been conveyed, pledged or otherwise transferred to or is otherwise owned or acquired by the issuer; and
  - (b) that pool of assets backs the securities or other financial obligations issued; and
  - (c) no asset in that pool (other than an asset directly payable by, guaranteed by, or backed by the full faith and credit of, the United States government or the government of a member of the OECD, or an asset which otherwise qualifies as collateral under subparagraph (1) or (2) of paragraph 1 of Schedule 2) has a value exceeding 20 per cent of the pool's aggregate value.

**"average annual debt service"** : the amount of insured unpaid principal and interest on an obligation, multiplied by the number of such insured obligations (assuming each obligation represents one thousand United States dollars par value), divided by the amount equal to the aggregate life of all such obligations (assuming each obligation represents one thousand United States dollars par value). This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{average annual debt service} = \frac{\text{total debt service} \times \text{number of bonds}}{\text{aggregate life}}$$

		bond years
total debt service	=	insured unpaid principal + interest
number of bonds	=	<u>total insured principal</u>
		US\$1,000
bond years	=	number of bonds x term in years

**"collateral"** : see Schedule 2;

**"commercial real estate"** : income-producing real property, other than residential property consisting of less than five units;

**"consumer debt obligations guarantees"** : financial guarantee insurance which indemnifies a purchaser or lender against loss or damage resulting from defaults on a pool of debts owed for extensions of credit (including in respect of instalment purchase agreements and leases) to individuals provided in the normal course of the purchaser's or lender's business, provided that the pool

- (a) meets the requirements of paragraph (2) of the definition of "asset-backed securities", and
- (b) has been determined to be investment grade;

**"industrial development bond"** : any security or other instrument or contractual obligation other than a utility first mortgage obligation, under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial or manufacturing purpose, and not payable or guaranteed by a governmental unit;

**"infrastructure bond"** : any security or other instrument or contractual obligation under which a payment obligation is created to finance a project serving a substantially public purpose or use or other provision of a utility service, the repayment of which is secured primarily by the revenues, rates, charges or tolls generated by the project;

**"insurable risk"** : with respect to asset-backed securities, that the obligation on an uninsured basis has been determined, by a securities rating agency acceptable to the Commission or, if it has not been submitted to such a rating agency, by an independent body acceptable to the Commission, to be not less than investment grade, based on the pool of assets pledged in support of the insured obligation or securing the insurer, without consideration of the creditworthiness of the issuer;

**"investment grade"** : with reference to an obligation or a parity obligation of the same issuer, that it has been -

- (a) determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the Commission; or
- (b) identified in writing by such a rating agency to be of investment grade quality; or
- (c) if it has not been submitted to any such rating agency, determined by an independent body acceptable to the Commission to be investment grade;

**"municipal bonds"** : any municipal obligation bonds and, except where excluded specifically or by the context, infrastructure bonds and special revenue bonds;

**"municipal obligation bond"** : any security or other instrument or contractual obligation (including a lease payable or guaranteed by a governmental unit) under which a payment obligation is created, issued by or on behalf of, or payable or guaranteed by, a governmental unit to finance its general operation or to finance a project serving substantially a public purpose or substantially for public use, and which is:

- (a) payable from tax revenues, and other income, within the jurisdiction of that governmental unit; or
- (b) payable or guaranteed by (or by any agency, department or instrumentality of) any member country of the OECD or a governmental unit thereof, or the principal sovereign government of any other country approved by the Commission or a governmental unit thereof; or
- (c) payable from rates or charges (but not tolls) levied or collected in respect of a non-nuclear utility project, public transportation facility, or public higher education facility; or
- (d) with respect to lease obligations, payable from future appropriations; or
- (e) payable from a combination of any of the above;

**"special revenue bond"** : any security or other instrument or contractual obligation under which a payment obligation is created, issued by or on behalf of, or payable or guaranteed by, a governmental unit to finance a project serving substantially a public purpose, or substantially for a public use, and not payable from any of the sources referred to in the definition of "municipal obligation bond" above, or any other securities which are acceptable to the Commission as being the functional equivalent of the foregoing issued by a non profit-making corporation;

**"surplus to policyholders"** : the excess of the Company's admitted assets after deduction of the Company's liabilities, including contingency reserves, loss reserves and unearned premium reserve;

**"utility first mortgage obligation"** : any obligation of an issuer secured by a first priority mortgage or charge on the utility property or other assets owned by or leased to an investor-owned or co-operative-owned utility company.