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Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008

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THE STATES, in pursuance of their Resolutions of the 25th July, 2007^a, and in exercise of the powers conferred on them by section 85 of the Insurance Business (Bailiwick of Guernsey) Law, 2002^b and all other powers enabling them, hereby order:-

Amendment of the Insurance Business (Bailiwick of Guernsey) Law, 2002.

1. The Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended, is further amended as follows.

2. In the arrangement of sections -

(a) delete –

"13. Suspension of insurance licence.",

(b) immediately after the entry relating to section 28, insert the following subheading and entries -

"Prohibition orders

28A. Power to make prohibition orders.

28B. List of prohibition orders.

28C. Right to make representations as to prohibition orders.", and

^a Articles IV and VI of Billet d'État No. XIX of 2007.

^b No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (c) immediately after the entry relating to section 49, insert the following subheading and entry –

"Notification of acquisition of voting power

49A. Notification of acquisition of voting power."

3. Immediately after section 11(2), insert -

"(2A) A licensed insurer shall, before effecting any portfolio transfer, notify the Commission of the proposed transfer and obtain the Commission's prior written approval thereto."

4. In section 11(3), insert immediately before "Current Personal Questionnaire", "Subject to subsection (3A), a".

5. Immediately after section 11(3), insert -

"(3A) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer from all or any requirements of subsection (3), either generally or in any particular case or class of case."

6. Section 13 is repealed and the consequential amendments in the Schedule to this Ordinance shall have effect.

7. For section 17(2)(e), substitute –

"(e) unless the Commission determines otherwise, details of

-

- (i) the fact of any conditions of the licence or directions restricting the acceptance of new business; and
- (ii) the fact of any condition of the insurer's licence imposed under section 12(4)(h) providing that any assets shall not be made the subject of any charge, security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission; and".

8. Immediately after section 28, insert the following subheading and sections -

"Prohibition orders

Power to make prohibition orders.

28A. (1) If it appears to the Commission, having regard to the provisions of Schedule 7, that an individual is not a fit and proper person to perform functions on behalf of a licensee in relation to an insurance business, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to -

- (a) any insurance business;
- (b) licensees generally or any specified class of licensee.

(3) An individual who performs or agrees to perform any

function in breach of a prohibition order is guilty of an offence.

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

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

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

List of prohibition orders.

28B. (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions, or description of functions, which the individual concerned is prohibited from performing.

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

(4) The Commission may publish -

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

been varied or revoked.

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

Right to make representations as to prohibition orders.

28C. (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing -

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

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

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

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

(a) stating the terms of, and the grounds for, the prohibition order; and

(b) giving particulars of the right of appeal conferred by this Law."

9. In section 29(5), immediately after "A licensed insurer", insert "or a general representative of a licensed insurer".

10. For section 30(2), substitute –

"(2) For the purposes of this Law, approved assets are those determined in accordance with the provisions of the Insurance Business (Approved Assets) Regulations, 2008^c".

11. Delete section 30(4).

12. For section 32(4), substitute –

^c Guernsey Statutory Instrument No.14 of 2008.

"(4) The Commission may by notice in writing served on a licensed insurer modify, subject to such conditions, if any, as may be specified in the notice, any requirement imposed by subsection (1) or (2) as respects that insurer for such amount and on such conditions as the Commission may approve."

13. In section 40(1), immediately after "licensed insurer shall", insert ", unless agreed in writing by the Commission,".

14. In section 45(3)(b), substitute "except where the Commission has given consent" for "except where the Royal Court otherwise directs".

15. In section 45(3)(c) and (d), for "21 days", substitute "42 days, or such other period that the Commission may specify not less than 21 days (provided that the Commission is satisfied that it is in the interests of the relevant policy holders),".

16. In section 48(3), substitute "an office copy" for "two office copies".

17. Immediately after section 49, insert the following subheading and section -

"Notification of acquisition of voting power"

Notification of acquisition of voting power.

49A. (1) Where a person who, alone or with associates, becomes entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company, or of any other company of which that company is a subsidiary, he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(2) Where a person, alone or with associates -

- (a) is already entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company or of any other company of which that company is a subsidiary; and
- (b) becomes entitled to exercise, or control the exercise of a further 5% or more of that voting power;

he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(3) For the purposes of subsections (1) and (2) –

- (a) a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever –
 - (i) becomes entitled to do so as a member of a company; or
 - (ii) acquires any interest which may entitle him to be a member of that company; and
- (b) the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of receipt by the Commission of written notification of the

proposed change unless, before the expiration of that period, the Commission serves notice on the licensee concerned that it does not approve the change."

18. In section 63(1), for subparagraph (l) substitute -

"(l) under section 28A, to make or vary a prohibition order prohibiting the performance of any function, any specified function or any specified description of function;"

and insert the following subparagraphs –

"(m) to refuse to vary or revoke any such order under section 28A(5); or

(n) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;"

19. In section 63(4), for "the decision was ultra vires or was an unreasonable exercise of the Commission's powers" substitute -

"-

(a) the decision was ultra vires or there was some other error of law;

(b) the decision was unreasonable;

(c) the decision was made in bad faith;

- (d) there was a lack of proportionality; or
- (e) there was a material error as to the facts or as to the procedure,".

20. In section 69, for "licensee" substitute "relevant person".

21. For section 69(11), substitute –

"(11) The provisions of this section shall apply in relation to a person who was a relevant person as they apply in relation to an existing relevant person, but only in connection with the business, ownership or control of that person -

- (a) at a time when he was a relevant person;
- (b) in the case of a person who was at any time a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, at any such time; and
- (c) in the case of a person who was at any time carrying on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986, at any such time."

22. Immediately after section 69(11), insert subsection (12) –

"(12) For the purposes of this section –

- (a) a "relevant person" means –
 - (i) a licensee;
 - (ii) a person who appears to the Commission to be conducting unlicensed business; and
 - (iii) a person providing services to a licensee; and
- (b) "person providing services to a licensee" means a person who performs any function on behalf of a licensee in relation to an insurance business."

23. In paragraph 7 of Schedule 1, for "5" substitute "10".

24. In paragraph 1(1), (3) and (3A) of Schedule 2, for "margin of solvency" substitute "minimum margin of solvency".

25. Paragraph 1(2) of Schedule 2 is repealed.

26. Immediately after paragraph 1(3) of Schedule 2, insert –

"(3A) The Commission may at any time by notice in writing served on an insurer, a class of insurers or insurers generally, modify the requirements specified in subparagraphs (1) and (3) to be used for current and/or future computations of the margin of solvency; and for the purposes of this subparagraph, in modifying the said requirement, the Commission shall consider -

- (a) the nature and classes of business involved;
- (b) the spread of risk and the historic and industry based claims data;
- (c) the size, complexity of business and business risks of the insurer; and
- (d) any other information which is available to the Commission and which it considers relevant to evaluating the reserve requirement set out in subparagraph (1)(b)."

27. In paragraph 1(4)(a)(i) and (4)(b)(i) of Schedule 2, for "and reinsurance commissions" substitute "and reinsurance and other commissions".

28. In paragraph 1(7) of Schedule 2, substitute "net premium income" for "gross premium income".

29. For paragraph 2(2) of Schedule 2, substitute –

"(2) The assets which a licensed insurer must at any time have in order to maintain the margin of solvency shall be approved assets."

30. Immediately after paragraph 2(2) of Schedule 2, insert –

"(2A) Notwithstanding subparagraph (2), the Commission may give permission in writing for a relevant licensee to maintain the margin of solvency, fully or in part, by way of assets which are not approved, for such period and on such conditions, if any, as it sees fit.

(2B) For the purposes of subparagraph (2A), a "relevant licensee" is a licensee who was a licensee on or before 12th March 2008."

31. Delete paragraph 2(3), (4), (5) and (6) of Schedule 2.

32. In Schedule 5 -

(a) in the definition of "controller", insert –

"(c) any person who has the power, alone or with another, to appoint or remove a director of a board or an executive committee;"

(b) immediately after the definition of "manager", insert -

"**"member"** in respect of a company has the same meaning as in the Companies (Bailiwick of Guernsey) Law, 2008^d;"

(c) immediately after the definition of "pool", insert –

"**"prohibition order"** has the meaning given in section 28A;"

(d) in the definition of "Royal Court" insert after "Ordinary" -

"Court, and for the purposes of this Law –

^d Order in Council No. ? of 2008.

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats; and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it;"
- (e) immediately after the definition of "related company", insert -

"**relevant person**" has the meaning given in section 69(12);", and

- (f) in the definition of "significant shareholder", immediately after "subsidiary;", insert –

"and a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever –

- (i) becomes entitled to do so as a member of a company; or
- (ii) acquires any interest which may entitle him to be a member of that company;"

Interpretation.

33. The Interpretation (Guernsey) Law, 1948^e shall apply to the interpretation of this Ordinance throughout the Bailiwick.

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

Citation.

34. This Ordinance may be cited as the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008.

Extent.

35. This Ordinance shall have effect throughout the Bailiwick.

Commencement.

36. This Ordinance shall come into force on 12th March 2008.

K.H. TOUGH,
Her Majesty's Greffier

SCHEDULE

Section 6

CONSEQUENTIAL AMENDMENTS UPON THE REPEAL OF SECTION 13 OF THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002

1. In section 8(2)(b), delete ", suspension".
2. In section 9, delete "suspended under section 13,".
3. In section 12(6), delete "suspension or" on both occasions that it appears.
4. In section 16(1)(a), delete "13 or" and "suspend or".
5. In section 16(1)(b), delete "suspended or".
6. In section 16(3)(a) and (b), delete "suspend or".
7. In section 17(4)(a)(i), delete "suspension" and "13".
8. In section 17(6)(a), delete ", or a particular insurer's licence has been suspended".
9. In section 63(1)(b), delete "suspend or".