

Island of



Guernsey

## Ordinance of the States

**VIII**  
**2010**

---

Made .....24th February, 2010

Coming into Operation .....24th February, 2010

---

### **The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010**



## **The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> January, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 85 of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them in that behalf, 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. Section 17(3) and (5) is repealed.
  
3. In section 17(6) for "the provisions of subsection (5)" substitute "the preceding provisions of this section".
  
4. After section 38 insert the following cross-heading and sections -

---

<sup>a</sup> Article XVII of Billet d'État No. I of 2010.

<sup>b</sup> No. XXI of 2002; amended by Ordinance No. XXXIII of 2003 (the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003); Ordinance No's. XII and LI of 2008; and Guernsey Statutory Instruments No. 33 of 2004 and No. 4 of 2008.

*"Making of Rules***Rules of the Commission.**

**38A.** The Commission may make rules in relation to the carrying on of insurance business by licensed insurers and generally as to the manner in which licensed insurers conduct, or hold themselves out as conducting, their business.

**Particular matters that may be covered by rules.**

**38B.** Rules may, without limitation -

- (a) set out general conditions applicable to licensed insurers (and accordingly make provision for matters in respect of which conditions may be imposed under section 12),
- (b) prescribe the manner in which licensed insurers must conduct, govern, manage and operate their business (and this includes, without limitation, matters relating to corporate governance, internal controls and reporting, the holding of client and policyholder assets, financial resources, the calculation of technical provisions and capital requirements),
- (c) prohibit licensed insurers from carrying on, or holding themselves out as carrying on, insurance business -
  - (i) of any specified class or description,

- (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
  - (iii) in relation to persons of a specified class or description or persons other than those of a specified class or description,
- (d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensed insurers of any discretionary powers afforded to them by clients or policyholders,
- (e) require licensed insurers to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of any insurance business, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensed insurers and their servants and agents and, without limitation, require licensed insurers to impose and enforce restrictions on the activities carried on by their servants and agents,

- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of insurance business,
- (h) require specified information to be given in the form and manner and at the time specified by or under the rules -
  - (i) to the Commission,
  - (ii) to the public, or
  - (iii) to any prescribed class or description of persons,
- (i) require licensed insurers to make provision for the protection of clients and policyholders in the event of the cessation of any business or any class or description of business carried on by them,
- (j) impose requirements as to the places and manner in which, and the times during which, licences are to be displayed or available for inspection by the public,
- (k) make provision as to the settlement of disputes,
- (l) require the public disclosure by licensed insurers of information of such class or

description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation -

- (i) information on the financial position and financial performance of licensed insurers,
  - (ii) information on the basis, methods and assumptions on which any information is prepared,
  - (iii) information on risk exposures and the management thereof, and
  - (iv) information on management and corporate governance, and
- (m) make provision as to the dealings and relationship of licensed insurers with other licensed insurers, other persons carrying on insurance business, clients, policyholders and the Commission.

*General provisions as to rules*

**Making, publication and effect of contravention of rules.**

**38C.** (1) Before making any rules the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of clients or policyholders or potential clients or policyholders, publish

proposals for the rules in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and shall consider any representations made to the Commission concerning those proposals.

(2) Rules shall specify the provisions of this Law under which they are made (and see section 85(7) for further provision as to their making and publication).

(3) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of any rule does not of itself render him liable to any proceedings, but -

(a) the Commission, in the exercise of its powers conferred by or under -

(i) this Law or any Ordinance, regulation or rule made under it, or

(ii) the regulatory Laws,

may take the rule and the contravention thereof into account in determining whether and in what manner to exercise those powers, and

(b) in any legal proceedings (criminal or otherwise), whether or not under this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before

which the proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question."

5. In section 61(1) after "conferred by section 63," insert "other than a decision to serve a notice under section 68(1), (2), (3) or (7) or 70(1),".

6. In section 80(n) for "described in section 21(2)" substitute "described in paragraph (a), (b), (d) or (f) of section 21(2)".

7. For section 81 substitute the following section -

**"Information supplied to Commission by relevant overseas authority.**

81. (1) This section applies, to the exclusion of section 79, to information relating to the business or other affairs of any person provided to the Commission for the purposes of its functions conferred by or under this Law by a relevant supervisory authority in a country outside the Bailiwick.

(2) Information described in subsection (1) -

(a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,

(b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances approved by, that authority, and

- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

(3) In requesting the consent of a relevant supervisory authority for the purposes of subsection (2)(b), the Commission must provide that authority with -

- (a) the name of any person to whom it proposes to disclose the information, and
- (b) an accurate description of that person's functions.

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the consent of the relevant supervisory authority was given.

(5) For the avoidance of doubt, and without limitation, nothing in this section prevents the disclosure of information by the Commission -

- (a) for the purposes or in the circumstances described in section 80(h), or
- (b) in accordance with the provisions of -
  - (i) the Criminal Justice (Proceeds of

Crime) (Bailiwick of Guernsey) Law,  
1999,

- (ii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (iii) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
- (iv) the Disclosure (Bailiwick of Guernsey) Law, 2007, or
- (v) any other enactment or subordinate legislation prescribed for the purposes of this section by regulations of the Commission,

in circumstances where that Law, enactment or subordinate legislation provides that the disclosure does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) No person who -

- (a) receives information described in subsection (1) from the Commission, or
- (b) who obtains any such information directly or

indirectly from a person who has so received it,

shall disclose the information except with, and in accordance with the conditions of, the consent of the Commission.

(7) A person who discloses information in contravention of subsection (6) is guilty of an offence."

8. After section 81 insert the following section -

**"Royal Court to take Commission's undertakings into account.**

**81A.** The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business or other affairs of any person held, received or obtained by it under or for the purposes of this Law (whether pursuant to the provisions of this Law, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or otherwise) -

(a) take into account -

(i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to which the Commission is subject in respect of the information,

(ii) any undertaking entered into by the Commission in relation to the use,

disclosure, safekeeping and return of the information, and

(iii) any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the information is held or was received or obtained, and

(b) where the information has been supplied to the Commission by a relevant supervisory authority in a country outside the Bailiwick -

(i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and

(ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it."

**Extent.**

9. This Ordinance has effect throughout the Bailiwick.

**Citation.**

10. This Ordinance may be cited as the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

**Commencement.**

11. This Ordinance shall come into force on the 24<sup>th</sup> February, 2010.

K. H. TOUGH,  
Her Majesty's Greffier.



**Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey.**

**PRICE £3.00**

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE