

Island of



Guernsey

Ordinance of the States

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2008

Made12th March, 2008

Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008

THE STATES, in pursuance of their Resolutions of the 25th July, 2007^a, and in exercise of the powers conferred on them by section 62 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^b and all other powers enabling them, hereby order:-

Amendment of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

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

2. In the arrangement of sections –

(a) delete -

"8. Suspension of insurance manager's or
insurance intermediary's licence.",

(b) after the entry relating to section 18, insert the
following subheading and entries -

"Prohibition orders

18A. Power to make prohibition orders.

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

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

18B. List of prohibition orders.

18C. Right to make representations as to prohibition orders.",

(c) after the entry relating to section 19, insert the following section -

"19A. Power to make regulations for procedures in respect of trigger events.",

(d) after the entry relating to section 25, insert the following sections –

"25A. Notification of conditions etc. or regulatory penalties.

25B. Notification of compliance.",

(d) after the entry relating to section 36, insert the following section-

"36A. Power to make regulations for procedures in respect of notification and objection to controllers, etc.", and

(e) after the entry relating to section 61, insert the following subheading and entry -

"Approved assets.

61A. Approved assets.".

3. In section 2(5), delete "or a licensed insurance manager".

4. For section 4(2)(i)(ii), substitute -

"(ii) the applicant will maintain shareholders' funds of an amount equal to or exceeding the Minimum Capital Requirement; and".

5. Section 8 is repealed and the consequential amendments in the Schedule to this Ordinance shall have effect.

6. In section 9(1)(n) -

(a) for "section 36", substitute "regulations made under section 36A", and

(b) for "section 36 or 37", substitute "regulations made under section 36A, or under section 37".

7. Immediately after section 9(5), insert subsection (5A) -

"(5A) Where the Commission makes a decision to revoke a licence, it may give notice of that decision when it is made, notwithstanding that the decision may not have effect when notice is given."

8. For section 12(2)(d), substitute –

"(d) unless the Commission determines otherwise, the fact of any conditions of the licence or directions restricting the acceptance of new business; and".

9. After section 18(4), insert subsection (5) –

"(5) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision of the Conduct of Business Rules or a code issued under this part of this Law shall not of itself render him liable to any criminal 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 provision of the Conduct of Business Rules or the code 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 provision of the Conduct of Business Rules or the code shall be admissible in evidence, and if the provision 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 provision may be taken into account in determining that question."

10. After section 18, insert the following subheading and sections -

"Prohibition orders

Power to make prohibition orders.

18A. (1) If it appears to the Commission, having regard to the provisions of Schedule 4, that an individual is not a fit and proper person to perform functions as or on behalf of a licensee in relation to the business of an insurance manager or an insurance intermediary (as the case may be), 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 business as an insurance manager or an insurance intermediary (as the case may be);
- (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 the business of an insurance manager or an insurance intermediary (as the case may be), 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.

18B. (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.

18C. (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."

11. Immediately after section 19, insert the following section –

"Power to make regulations for procedures in respect of trigger events.

19A. (1) The Commission may by regulation make such provision as it sees fit in relation to the requirements and procedure in respect of trigger events which require –

- (a) the notification, or approval, of the Commission; and
- (b) remediation by a licensee.

(2) For the purposes of this section, a "trigger event" includes, but is not limited to –

- (a) a change in a director, controller, partner, manager, auditor or authorised insurance representative of a licensee;
- (b) a change in the registered office of the licensee;
- (c) any material change in the business plan of the licensee;

- (d) any breach of a provision in Schedule 4 (Minimum criteria for licensing);
- (e) the cancellation or invalidation of the professional indemnity insurance of the licensee; and
- (f) any criminal litigation, or civil proceedings, arbitration proceedings or any other claim, brought against the licensee.

(3) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by regulations made under this section is guilty of an offence.

(4) The Commission may, with the approval of Her Majesty's Procureur, specify the maximum penalty of an offence under subsection (3) but that penalty shall not exceed –

- (a) upon conviction on indictment, a term of imprisonment of 2 years;
- (b) upon summary conviction –
 - (i) a term of imprisonment of 6 months; or
 - (ii) a fine at level 5 on the uniform scale."

12. For section 20(2), substitute –

"(2) Regulations under subsection (1) may, without limitation, require the annual return to include or be accompanied by such

documents as the Commission sees fit."

13. For section 24(b), substitute the following paragraph -

"(b) such evidence of professional indemnity insurance cover in respect of the licensee as is required by the Commission under rules issued by the Commission from time to time concerning the licensee's professional indemnity insurance cover."

14. After section 25, insert the following sections -

"Notification of conditions etc. or regulatory penalties.

25A. (1) Where a licensee proposes to enter into a contract of professional indemnity insurance in respect of his activities as a licensee and

—

(a) his licence is or has been made subject to any condition or restriction by or under this Law;
or

(b) he is or has been made subject to any regulatory penalty by or under this Law, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^c, or any of the regulatory Laws;

^c Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).

he shall, either directly or through the broker with whom he has arranged the proposed contract (as the case may be), notify the insurer who will provide the professional indemnity insurance of any such condition, restriction or regulatory penalty.

(2) Where a licensee must notify an insurer under subsection (1), he shall also -

- (a) provide evidence to the Commission that he has given such notification; and
- (b) inform the Commission of any consequences that may flow from this notification.

(3) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence.

Notification of compliance.

25B. (1) Where a licensee has entered into a contract of professional indemnity insurance in respect of his activities as a licensee, he shall notify the Commission of –

- (a) his compliance with –
 - (i) all warranties in or under that contract; and
 - (ii) any requirement of notification or disclosure to the insurer in or under that contract throughout the period of validity of the contract; and

(b) any –

- (i) actual or purported termination, avoidance or invalidation of the professional indemnity insurance; or
- (ii) rejection of a notification or claim on the professional indemnity insurance.

(2) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence."

15. In section 27(5), for "partner, manager or authorised insurance representative", substitute "partner or manager".

16. In section 27(5), insert the following subsection –

"(5A) Without prejudice to any other provision of this Law, a licensee shall notify the Commission of the change of any authorised insurance representative within 10 days of such change being made: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee from all or any of the requirements of this subsection, either generally or in any particular case or class of case."

17. Immediately after section 36, insert the following section –

"Power to make regulations for procedures in respect of notification and objection to controllers, etc.

36A. The Commission may by regulation make such provision as it sees fit in relation to the –

- (a) requirements and procedure by which a person may become –
 - (i) a controller of a licensee which is a company;
 - (ii) a partner in a licensee which is a partnership;
or
 - (iii) a director of a licensee which is an unincorporated body; and
- (b) procedure by which the Commission may object to a person becoming a person listed in paragraph (a)."

18. In section 38(a), for "section 36(1)", substitute "regulations made under section 36A".

19. In sections 38(b), 39(4) and 43(3), for "section 36 or 37", substitute "regulations made under section 36A, or under section 37".

20. For section 39(1), substitute –

"(1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of regulations made under section 36A or has become or continued to be such a controller after a notice of objection has been served on him under regulations made under section 36A, or under section 37."

21. In section 43(1), for subparagraph (j) substitute -

"(j) under section 18A, to make a prohibition order prohibiting the performance of any function, any specified function or any specified description of function;"

and insert the following subparagraphs -

"(k) to refuse to vary or revoke any such order under section 18A(5);

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

22. In section 43(4), for the words "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."

23. In section 46, for "licensee" substitute "relevant person".

24. For section 46(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 insurance intermediary or authorised insurance manager 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 business as an insurance intermediary in such circumstances as not to require registration by virtue of Part IVA of the Insurance Business (Guernsey) Law, 1986, at any such time."

25. Immediately after section 46(11), add 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 the business of an insurance manager or an insurance intermediary (as the case may be)."

26. Immediately after section 61, insert the following subheading and section –

"Approved assets."

Approved assets.

61A. For the purposes of this Law, approved assets will be those assets that the Commission may from time to time approve by regulation."

27. In section 65, immediately after "17(3)", insert "18A(3), 25A(3), 25B(2)".

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

29. In paragraph 2(1) of Schedule 2, for "may for time" substitute "may from time".

30. In Schedule 3 –

(a) in the definition of "auditor", delete "and who is approved by the Commission to audit the accounts of licensees;",

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

"Minimum Capital Requirement" means the amount that the Commission may from time to time determine to be the Minimum Capital Requirement;",

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

"prohibition order" has the meaning given in section 18A;",

(d) immediately after the definition of "regulatory Laws", insert -

"regulatory penalty" means any enforcement action taken by the Commission to regulate a licensee or any person carrying out a function for or on behalf of a licensee;",

(e) immediately after the definition of "related company", insert -

"relevant person" has the meaning given in section 46(12);",

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

"Court, and for the purposes of this Law –

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats; and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it; ",
- (g) at the end of the definition of "subsidiary company", substitute a semi-colon for the full stop, and
- (h) immediately after the definition of "subsidiary company", insert -

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^d."

Interpretation.

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

Citation.

32. This Ordinance may be cited as the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008.

Extent.

33. This Ordinance shall have effect throughout the Bailiwick.

^d Ordres en Conseil Vol. XXXI, p.278

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

Commencement.

34. (1) The provisions of this Ordinance, except section 4, shall come into force on 12th March 2008.

(2) Section 4 shall come into force on 12th March 2009.

K.H. TOUGH,
Her Majesty's Greffier

SCHEDULE

Section 5

**CONSEQUENTIAL AMENDMENTS UPON THE REPEAL OF SECTION 8 OF
THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES
(BAILIWICK OF GUERNSEY) LAW, 2002**

1. In section 5(2)(b), delete ", suspension".
2. In section 6, delete "suspended under section 8".
3. In section 7(4)(j), delete "suspension or" and "8 or".
4. In section 7(6), delete "suspension or" on both occasions that it appears.
5. In section 11(1)(a), delete "8 or" and "suspend or".
6. In section 11(1)(b), delete "suspended or".
7. In section 11(3)(a) and (b), delete "suspend or".
8. In section 12(3)(a)(i), delete "8,".
9. In section 12(4)(a), "suspension," and "8,".
10. In section 12(6)(a), delete ", or a particular insurance manager's or insurance intermediary's licence has been suspended".
11. In section 43(1)(b), delete "suspend or".