

Island of



Guernsey

Ordinance of the States

IX
2010

Made24th February, 2010

Coming into Operation24th February, 2010

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2010

**The Insurance Managers and Insurance Intermediaries
(Bailiwick of Guernsey) (Amendment)
Ordinance, 2010**

THE STATES, in pursuance of their Resolution of the 27th January, 2010^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 in that behalf, hereby order:-

Amendment of the Insurance Managers and Insurance Intermediaries Law.

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

2. After section 4(2)(h)(ii) insert the following subparagraph -

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

3. Section 4(2)(i)(ii) is repealed.

4. Section 12(4) and (5) is repealed.

5. In section 12(6) for "the provisions of subsection (4)" substitute "the

^a Article XVII of Billet d'État No. I of 2007.

^b No. XXII of 2002; amended by Ordinance No. XXXIII of 2003 (Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003); Ordinance No. XIII of 2008 and Guernsey Statutory Instrument No. 2 of 2008.

preceding provisions of this section".

6. Immediately before section 18 insert the following cross heading -

"Conduct of business rules and codes of conduct".

7. In section 18(4) -

- (a) after "references in this section" insert "and in sections 18AA and 18AB", and
- (b) the words "when acting as insurance intermediaries" are repealed.

8. After section 18 insert the following sections -

"Particular matters that may be covered by Conduct of Business Rules.

18AA. Conduct of Business Rules may, without limitation -

- (a) set out general conditions applicable to licensed insurance intermediaries (and accordingly make provision for matters in respect of which conditions may be imposed under section 7),
- (b) prescribe the manner in which licensed insurance intermediaries 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 insurance intermediaries from carrying on, or holding themselves out as carrying on, business as an insurance intermediary -

(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 him 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 insurance intermediaries of any discretionary powers afforded to them by clients or policyholders,

(e) require licensed insurance intermediaries to employ persons of specified descriptions, and to have at their disposal specified resources, in

connection with the carrying on of any business as an insurance intermediary, and specify the powers and duties of persons so employed,

- (f) control the relationship between licensed insurance intermediaries and their servants and agents and, without limitation, require licensed insurance intermediaries 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 business as an insurance intermediary,
- (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 insurance intermediaries 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, and
- (l) require the public disclosure by licensed insurance intermediaries 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 insurance intermediaries,
 - (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.

Making, etc, of Conduct of Business Rules.

18AB. (1) Before making any Conduct of Business 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) Conduct of Business Rules shall specify the provisions of this Law under which they are made (and see section 62(7) for further provision as to their making and publication).".

9. In section 41(1) after "conferred by section 43," insert "other than a decision to serve a notice under section 45(1), (2), (3) or (7) or 47(1),".

10. In section 57(n) for "described in section 21(2)" substitute "described in paragraph (a), (b), (d) or (f) of section 21(2)".

11. For section 58 substitute the following section -

"Information supplied to Commission by relevant overseas authority.

58. (1) This section applies, to the exclusion of section 56, 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 57(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."

12. After section 58 insert the following section -

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

58A. 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.

13. This Ordinance has effect throughout the Bailiwick.

Citation.

14. This Ordinance may be cited as the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

Commencement.

15. This Ordinance shall come into force on the 24th 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