

The Protection of Investors (Amendment) Ordinance, 1998

THE STATES, in pursuance of their Resolution of 29th January, 1998¹ and in exercise of the powers conferred upon them by sections 2 and 43 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987², hereby order:-

Extension of controlled investments

1. In Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended ("the Law"), immediately after paragraph 1 there is inserted:

"Category 2 : General securities and derivatives

2(1) General securities and derivatives constitute controlled investments for the purposes of this Law; and for those purposes general securities and derivatives comprise

- (a) shares and stock in the share capital of a company other than an open-ended investment company;
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging the indebtedness of a company or public sector body; but this item does not extend:
 - (i) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;

¹ on Article 19 of Billet d'État No. III of 1998.

² Ordres en Conseil Vol. XXX, p.281; Recueil d'Ordonnances Tome XXIV, p.324; Tome XXVI, p.333; Order in Council No. XII of 1995.

- (ii) to a cheque or other bill of exchange, a banker's draft or a letter of credit;
 - (iii) to a bank note, a bank statement, or (by reason of any financial obligation contained in it) to any lease or disposition of real property, to any bond or other security over real property, or to an insurance policy;
- (c) partnership interests of the limited partners in a closed-ended limited partnership, units in a closed-ended unit trust, and, without prejudice to the generality of item (a), shares in a closed-ended investment company;
- (d) warrants or other instruments entitling the holder to subscribe for investments falling within items (a), (b), or (c);
- (e) certificates or other instruments which confer proprietary, disposal, underwriting, conversion or acquisition rights in respect of investments falling within any of items (a) to (d);
- (f) options to acquire or dispose of:
 - (i) an investment falling within any other item of this subparagraph, or within this item; or
 - (ii) currency; or
 - (iii) gold, palladium, platinum or silver;
- (g) rights under a contract for the sale of a commodity or other property (including currency) under which delivery is to be made at a future date and at a price agreed upon when the contract is made, but excluding rights under contracts made for commercial rather than investment

purposes, and, without prejudice to the generality of the foregoing, inter-bank foreign exchange dealings and ordinary foreign exchange facilities offered to customers of banks and bureaux de change;

- (h) rights under a contract for differences, or under any other contract of which the purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description, or in an index or other factor designated for that purpose in the contract, except where the parties intend that the profit be obtained, or the loss be avoided, by taking delivery of the property to which the contract relates;
- (i) rights to, and interests in, any of the foregoing investments.

(2) In this paragraph,

"closed-ended unit trust" and **"closed-ended limited partnership"** have the same meanings as in paragraph 1 of this Schedule;

"closed-ended investment company" means a body corporate which would be a collective investment scheme if it were an open-ended investment company;

"company" means any body (whether or not incorporated, and wherever incorporated or constituted) which is not a public sector body;

"public sector body" means any international, national or local government, governmental or other public body or organisation.

Extended definitions relating to restricted activities

2. (1) In item 4 of Schedule 2 to the Law-
 - (a) in paragraph (a), immediately after "subscribing for" there is inserted ", borrowing, lending";
 - (b) in paragraph (b), immediately after "subscribe for" there is inserted ", borrow, lend".
- (2) For item 8 of Schedule 2 to the Law there is substituted:
 - "8. **Custody**, that is to say -
 - (a) holding as trustee or custodian the assets underlying a collective investment scheme, within the meaning of category 1 in Schedule 1, or the evidence of title to those assets;
 - (b) safeguarding assets belonging to others which comprise general securities and derivatives within the meaning of category 2 in Schedule 1, or the evidence of title to such assets."

Incidental activities

3. For Note B to Schedule 2 to the Law there is substituted:

"Note B : Incidental activities

An activity undertaken in the course of a profession or business which is not itself controlled investment business is not a restricted activity if the activity is:

- (a) a part of other services provided in the course of that profession or business; and

- (b) undertaken without separate or additional remuneration, whether from the client concerned or from a third party."

Citation

4. This Ordinance may be cited as the Protection of Investors (Amendment) Ordinance, 1998.

Commencement

5. This Ordinance shall come into force on 1st July, 1998, and shall apply to any person then falling within section 45(1) of the Law in accordance with, and subject to, subsections (1) and (2) of that section.