

# PROJET DE LOI

ENTITLED

## **The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008**

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## **The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 13<sup>th</sup> day of December, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### REGISTRATION OF NON-REGULATED FINANCIAL SERVICES BUSINESSES

##### *Preliminary*

##### **Application of Law.**

1. (1) This Law applies to the businesses specified in Schedule 1.
- (2) Those businesses are "**financial services businesses**" for the purposes of this Law.
- (3) However, a business is not a financial services business for the purposes of this Law if it is a regulated business.

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<sup>a</sup> Article 16 of Billet d'État No. XXVI of 2007.

(4) The Policy Council may by regulation amend Schedule 1 by adding, deleting or amending any class or description of business.

**Financial services businesses must be registered by Commission.**

2. (1) A financial services business carrying on or holding itself out as carrying on business in or from within the Bailiwick must, subject to the provisions of section 3, be registered by the Guernsey Financial Services Commission ("**the Commission**").

(2) A financial services business which is not registered in accordance with subsection (1) is guilty of an offence.

**Exemptions from requirement to register.**

3. A financial services business is not required to be registered by the Commission where -

- (a) the total turnover of the person carrying on the financial services business in respect of financial services business does not exceed £50,000 per annum,
- (b) the financial services business does not carry out occasional transactions, that is to say, any transaction involving more than £10,000, carried out by the financial services business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

- (c) the financial services business does not exceed 5% of the total turnover of the person carrying on the business,
- (d) the financial services business is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) the financial services business does not facilitate or transmit money or value by any means,
- (f) the main activity of the person carrying on the financial services business is not that of a financial services business, and
- (g) the financial services business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

### *Registration*

#### **Application for registration.**

4. (1) A financial services business required to be registered under section 2 shall apply to the Commission for registration.

(2) An application for registration shall be made in such form and manner as the Commission may determine and shall be accompanied by -

- (a) a statement of -

- (i) its legal name and any trading names,
- (ii) its place and date of incorporation or establishment,
- (iii) its principal place of business and any other business addresses in the Bailiwick,
- (iv) details of the type or types of financial services business carried out,
- (v) the name, address, date of birth and nationality of each of its directors, controllers, partners, senior officers and beneficial owners,
- (vi) the name of the money laundering reporting officer,
- (vii) subject to the provisions of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002<sup>b</sup>, whether or not any person mentioned in paragraphs (v) and (vi) has at any time had a criminal conviction and, if so, details of the conviction and the circumstances surrounding it,

(b) such other information and documents as the

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<sup>b</sup> Order in Council No. XIV of 2002.

Commission may reasonably require for the purpose of determining the application, and

- (c) subject to subsection (3), a non-refundable application fee of such amount as may be prescribed by regulations of the Commission.

(3) A financial services business which, immediately prior to the commencement of this Law, has fulfilled, and continued to fulfil, the requirements of Regulation 16 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2007, shall be exempt from the requirement to pay the application fee under subsection (2)(c).

(4) On receipt of an application for registration and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be a director, controller, partner, senior officer or beneficial owner to provide such additional information and documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information or statement to be provided to the Commission under this section shall be in such form as the Commission may require.

(6) The Commission's requirements under subsections (4) and (5) may differ as between different applications.

(7) An application under this section may be withdrawn by notice in writing to the Commission at any time before it is determined.

(8) If there is any change to any of the information supplied to

the Commission by or on behalf of an applicant for the purposes of an application for registration (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission, before the application is granted or refused, of the change, and a failure to do so is, without prejudice to the generality of any other provision of this Law, a ground for the refusal or revocation of registration.

**Grant or refusal of registration.**

**5.** (1) The Commission may, on receipt of an application under section 4 -

- (a) grant the application, or
- (b) refuse the application, or
- (c) grant the application subject to conditions under section 8.

(2) The Commission may refuse an application for registration only if -

- (a) the application is not accompanied by the application fee, unless the applicant is exempt under section 4(3), or the application is otherwise not made in accordance with the provisions of section 4,
- (b) any requirement of the Commission under section 4 has not been complied with,
- (c) it appears to the Commission that any information,

statement or document provided in support of the application is false, misleading, deceptive or inaccurate,

- (d) it appears to the Commission that the applicant has contravened in a material particular or committed an offence under a provision of, or made under, this Law or the prescribed Laws,
- (e) proceedings have been or are to be instituted in respect of the applicant under section 14 (winding up), section 26 (disqualification orders) or section 27 (injunctions),
- (f) it appears to the Commission that the applicant or any person who is, or is to be, a director, controller, partner, senior officer or beneficial owner -
  - (i) is not a fit and proper person to be concerned in the management of a financial services business, having regard to the provisions of Schedule 2, which shall have effect accordingly, or
  - (ii) has failed without reasonable excuse to provide the Commission with any information reasonably requested by the Commission concerning the fitness or propriety of any such person to be concerned in the management of a financial services business,

- (g) it appears to the Commission that the interests of the public or the reputation of the Bailiwick as a finance centre are in any way jeopardised, whether by the manner in which the applicant is conducting, or proposes to conduct, its affairs or for any other reason, or
- (h) a relevant supervisory authority in a country outside the Bailiwick has withdrawn from the applicant an authorisation corresponding to a registration under this Law.

(3) Where the Commission decides to refuse an application for registration, the Commission shall serve on the applicant, in accordance with the provisions of section 15, notice in writing of the decision.

(4) Except in circumstances where the Commission has notice of any grounds upon which it could refuse an application for, or revoke, registration of a financial services business, the Commission shall have no obligation to make any enquiries concerning -

- (a) an application for registration, or
- (b) the continued registration,

of any financial services business.

**Certificate of registration.**

6. (1) On approving an application for registration of a financial

services business under section 4, the Commission shall give the applicant a certificate of registration in such form and containing such information as the Commission may determine.

(2) A financial services business shall immediately deliver its certificate of registration to the Commission -

(a) whenever required to do so by the Commission, and

(b) on the revocation, suspension or surrender of its registration.

(3) Except when required by or under subsection (2) to deliver its certificate of registration to the Commission, a financial services business shall, at its principal place of business in the Bailiwick, at all times during ordinary business hours, make the certificate available to any person reasonably requesting to see it.

(4) The certificate of registration remains, at all times, the property of the Commission.

(5) A person who contravenes any provision of subsection (2) or (3) is guilty of an offence.

**Validity of registration and general requirements.**

7. (1) The registration of a financial services business shall, subject to subsection (2), remain effective until it is revoked or surrendered under section 10 or 11.

(2) An annual fee, of such amount as may be prescribed by

regulations of the Commission, shall be payable, on or before such date in each calendar year as may be so prescribed, in respect of each financial services business registered under this Law.

(3) A registered financial services business must inform the Commission of any change occurring to the information given to the Commission for the purposes of its application for registration under section 4(2) or to any information given to the Commission thereafter -

- (a) prior to making such a change, or
- (b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease being a financial services business to which this Law applies.

**Conditions of registration.**

8. (1) The Commission may, when registering a financial services business or at any time thereafter, impose such conditions in respect of the registration as it thinks fit.

(2) Such conditions may apply to registered financial services businesses generally, to any class of financial services business or to any particular financial services business.

(3) The Commission may vary or rescind any condition of a registration.

(4) Without prejudice to the generality of subsection (1), the

conditions which may be imposed in respect of a registration may make provision for the protection of the public or for the protection and enhancement of the reputation of the Bailiwick as a finance centre, and conditions may (without limitation) -

- (a) require the financial services business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,
- (b) impose limitations on the acceptance or carrying on of business,
- (c) prohibit the financial services business from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons,
- (d) require the financial services business to provide, in whatever form and manner and at whatever time the Commission may reasonably determine, evidence of compliance with any provision of, or made under, this Law or the prescribed Laws.

(5) A financial services business which contravenes any condition of its registration is guilty of an offence.

(6) The contravention of a condition of a registration shall, in addition to constituting an offence under subsection (5), be a ground for the suspension or revocation of the registration but shall not of itself invalidate any

contract entered into or transaction completed before the date of suspension or revocation.

(7) In considering whether or not to impose, vary or rescind any condition in respect of a registration the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 5 or 10 when considering whether or not to grant an application for a registration or to revoke a registration.

(8) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a registration and the date from which any such condition is effective, and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

(9) Where the Commission decides, otherwise than with the agreement of the financial services business concerned, to impose, vary or rescind any condition in respect of a registration, the Commission shall serve upon the financial services business concerned, in accordance with the provisions of section 15, notice in writing of the decision setting out particulars of the condition in question.

#### **Suspension of registration.**

9. (1) The Commission may, by notice in writing served on a financial services business, suspend the financial services business's registration -

(a) at the request of the financial services business concerned, or

(b) in any case in which it appears to the Commission

that it has power, under the provisions of section 10, to revoke the registration.

(2) The suspension of a registration in pursuance of subsection (1) shall be -

- (a) for a period specified by the Commission,
- (b) until the occurrence of an event so specified, or
- (c) until any prohibitions or requirements so specified are complied with.

(3) During a period of suspension of a registration in pursuance of subsection (1) -

- (a) the financial services business may not carry on, or hold itself out as carrying on, business of the description to which the registration relates in or from within the Bailiwick, and
- (b) no payments may be made by or to the financial services business or any person acting on the financial services business's behalf in respect of business of that description without the prior written approval of the Commission.

(4) In considering whether or not to suspend a financial services business's registration in pursuance of subsection (1), the Commission may, without prejudice to the generality of the foregoing provisions of this section, have

regard to any matter to which it may have regard under section 5 or 10 when considering whether or not to grant an application for a registration or to revoke a registration.

(5) Where the Commission decides, otherwise than with the agreement of the financial services business concerned, to suspend a registration, the Commission shall serve upon the financial services business concerned, in accordance with the provisions of section 15, notice in writing of the decision.

(6) The provisions of section 10(3) to (6) shall apply in relation to a decision of the Commission to suspend a registration as they apply in relation to a decision of the Commission to revoke a registration, and for that purpose references in those subsections (however expressed) to revocation shall include references to suspension.

#### **Revocation of registration.**

**10.** (1) The Commission may revoke a registration held by a financial services business if it appears to the Commission that -

- (a) any of the provisions of section 5(2)(d) to (h) would apply in respect of the registered financial services business if it were applying for registration,
- (b) the financial services business has contravened any condition imposed by the Commission under section 8,
- (c) the Commission has been provided with false, misleading, deceptive or inaccurate information for the purposes of any provision of, or made under, this

Law -

- (i) by or on behalf of the financial services business, or
- (ii) by or on behalf of a person who is or is to be a director, controller, partner, senior officer or beneficial owner, or

(d) the annual fee has not been paid.

(2) In considering whether or not to revoke a registration the Commission may, without prejudice to the foregoing provisions of this section, have regard to any matter to which it may have regard under section 5 when considering whether or not to grant an application for a registration.

(3) A decision of the Commission to revoke a registration shall not, subject to the provisions of subsection (4), have effect until the end of the period within which, under section 16, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

(4) Where the Commission is of the view that it is necessary or desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick as a finance centre, the Commission may apply to the Court for an order under this subsection directing that its decision to revoke a registration should, without prejudice to any appeal in respect of the decision under section 16, have immediate effect, and the Court may make an order under this subsection on such terms as it thinks just.

(5) An application by the Commission for an order under subsection (4) may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte.

(6) In this section "**the Court**" means -

(a) where the financial services business in relation to the registration of which the order is sought -

(i) is an Alderney company, or

(ii) is not an Alderney company or a Guernsey company but has its principal place of business in Alderney,

the Court of Alderney,

(b) where the financial services business in relation to the registration of which the order is sought is not an Alderney company or a Guernsey company but has its principal place of business in Sark, the Court of the Seneschal, and

(c) in any other case, the Royal Court.

(7) Where the Commission decides, otherwise than with the agreement of the financial services business concerned, to revoke a registration, the Commission shall serve upon the financial services business concerned, in accordance with the provisions of section 15, notice in writing of the decision.

**Surrender of registration.**

11. (1) A financial services business may surrender its registration by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or at such later date as may be specified therein and, where a later date is so specified, the financial services business may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission, upon the written application of the financial services business and by notice in writing to the financial services business, allows the surrender to be withdrawn.

*Information as to registered financial services businesses*

**List of, and information as to, registered financial services businesses.**

12. (1) The Commission shall -
- (a) establish and maintain, in such form as the Commission may determine, a list of all financial services businesses which are for the time being registered,
  - (b) 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 that list, and

- (c) publish a copy of the list on the Commission's official website.

(2) The list maintained under subsection (1) shall contain, in relation to each financial services business -

- (a) a statement of -
  - (i) the legal name and any trading names of the business,
  - (ii) its principal place of business and any other business addresses in the Bailiwick,
  - (iii) details of the type or types of financial services business carried out, and
- (b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission -

- (a) whether in consequence of -
  - (i) any grant of a registration under section 5 or suspension, revocation or surrender of a registration under section 9, 10 or 11, or

(ii) any change in relation to a financial services business, or

(b) due to an error or for any other reason,

that the list maintained under subsection (1), or any particular contained in an entry in that list, is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact that a particular financial services business -

(a) has been granted or refused a registration,

(b) has ceased to be registered, whether by virtue of the revocation or surrender of the registration or otherwise, or

(c) has had its registration suspended,

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

## PART II

### WINDING UP OF REGISTERED FINANCIAL SERVICES BUSINESSES

#### **Application of this Part.**

13. This Part applies to registered financial services businesses, or the persons carrying on registered financial services businesses, which are Guernsey

companies or Alderney companies.

**Winding up.**

**14.** (1) The Commission or, with the leave of the court, any other person, may present an application for the winding up in accordance with the Companies (Guernsey) Law, 1994<sup>c</sup> of a registered financial services business, or a person carrying on a registered financial services business, which is a Guernsey company, or in accordance with the Companies (Alderney) Law, 1994<sup>d</sup> of a registered financial services business, or a person carrying on a registered financial services business, which is an Alderney company -

- (a) on the ground that the financial services business has contravened in a material particular a provision of, or made under, this Law or the prescribed Laws, or has committed an offence under such a provision, or
- (b) where such winding up appears to be necessary -
  - (i) for the protection of the public against the effects of dishonesty, incompetence or malpractice, or
  - (ii) to counter financial crime and the financing of terrorism in the Bailiwick or elsewhere, or

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<sup>c</sup> Orders in Council No. XXXIII of 1994; No. XIV of 1996; No. I of 2001, No. II of 2002 and No. IX of 2006; also amended by Ordinance No. X of 1997, No. XXXIII of 2003 and Ordinances No. XI, XII and XVIII of 2006.

<sup>d</sup> Order in Council No. XXXIV of 1994; No. XV of 2002.

- (iii) for the maintenance of confidence in the finance sector in the Bailiwick, or
- (iv) to protect or enhance the reputation of the Bailiwick as a finance centre.

PART III  
SUPPLEMENTARY MATTERS

*Notice of decisions*

**Notice of Commission's decision to refuse registration, etc.**

**15.** (1) Notice of a decision of the Commission required to be served under section 5(3), 8(9), 9(5) 10(7) or 25(3) -

- (a) shall state the grounds of the Commission's decision, and
- (b) shall give particulars of the right of appeal conferred by section 16.

(2) Where -

- (a) a ground for a decision mentioned in section 5(3), 8(9), 9(5), 10(7) or 25(3) is that any person who is, or is to be, a director, controller, partner, senior officer or beneficial owner of the financial services business is not a fit and proper person to be concerned in the

management of a financial services business,  
having regard to the provisions of Schedule 2,  
or

- (b) a condition of a registration requires the removal or replacement of any person as a director, controller, partner or senior officer,

the Commission shall serve on that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to him) together with particulars of the right of appeal conferred by section 16.

### *Appeals*

#### **Appeals against decisions of Commission.**

16. (1) A person aggrieved by a decision of the Commission -
- (a) to refuse an application by him for registration of a financial services business under section 5(3),
  - (b) to impose, vary or rescind any condition in respect of his registration under section 8(9),
  - (c) to suspend or revoke his registration under section 9(5) or 10(7),
  - (d) to impose a requirement under section 18,
  - (e) to serve a notice on him under section 19(1) or (3), or section 20(1),

- (f) to issue a private reprimand under section 25, or
- (g) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Court against the decision.

(2) Where -

- (a) a ground for a decision described in subsection (1) is that any person who is, or is to be, a director, controller, partner, senior officer or beneficial owner of the financial services business is not a fit and proper person to be concerned in the management of a financial services business, having regard to the provisions of Schedule 2, or
- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as a director, controller, partner or senior officer,

the person to whom the ground relates or whose removal or replacement is required may appeal to the Court against the finding that there is a ground for the decision or, as the case may be, against the decision to require his removal.

(3) The grounds of an appeal under this section are that -

- (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.

(4) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(5) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

(6) On an appeal under this section the Court may -

(a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(7) On an appeal under this section against a decision described in subsection (1)(c) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(8) In this section, "**the Court**" means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(9) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) shall lie to the Court of Appeal on a question of law.

*Power of Commission to obtain information*

**Site visits.**

17. The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008 shall apply to financial services businesses registered under this Law as if such businesses were persons prescribed by Ordinance under the provisions of section 21C of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>e</sup> and for the purposes of this section -

- (a) references in that Ordinance to a licensee shall be deemed to be references to a financial services business registered under this Law, and
- (b) references in that Ordinance to the regulatory Laws shall be deemed to be references to this Law and to the prescribed Laws within the meaning of section 42.

**Power to request and obtain information and documents.**

18. (1) The Commission may, by notice in writing served on a registered financial services business, require it to provide the Commission -

- (a) at such times or intervals, at such place and in

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<sup>e</sup> 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).

respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions;

- (b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on or on any aspect of any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may, by notice in writing served on a registered financial services business-

- (a) require it to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,
- (b) require it to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

being information or documents reasonably required by the Commission for the performance of its functions.

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a registered financial services business, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The power conferred by this section to require a person to produce any documents includes power -

(a) if the documents are produced, to take copies of them or extracts from them and to require -

(i) that person, or

(ii) any other person who is a present or past director, controller, partner, senior officer or beneficial owner of that financial services business;

to provide an explanation of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) If it appears to the Commission to be desirable to do so for the protection of the public or the protection and enhancement of the reputation of the Bailiwick as a finance centre, the Commission may also exercise the powers

conferred by this section in relation to any person who is or has at any relevant time been an associated party of the financial services business.

(6) The foregoing provisions of this section shall apply in relation to a former registered financial services business as they apply in relation to a registered financial services business, but only, unless the Commission directs otherwise in any particular case, for a period of 6 years immediately after the date on which the former registered financial services business ceased to be registered.

(7) The Commission may, by notice in writing served on any person who is or is to be a director, controller, partner, senior officer or beneficial owner of a financial services business, require him to furnish the Commission, within such time as may be specified in the notice, with such information or documents as the Commission may reasonably require for determining whether he is a fit and proper person to be concerned in the management of a financial services business.

(8) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to, where the financial services business is a company, any person who is a significant shareholder of the financial services business if the Commission considers that it is desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick as a finance centre.

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

(10) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (9) or section 32(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(11) A notice under subsection (1), (2), (3) or (7) shall give particulars of the right of appeal conferred by section 16.

**Investigations by inspectors.**

19. (1) The Commission may, in relation to any registered financial services business, if it considers it desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick as a finance centre, appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on -

- (a) the nature, conduct or state of the business of the financial services business in question or any particular aspect of that business, or
- (b) the ownership or control of the financial services business,

and the Commission shall give notice in writing of the appointment to the financial services business concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any person who is or has at any relevant time been an

associated party of the financial services business under investigation.

(3) An inspector may not investigate the business of a party under subsection (2) unless and until the Commission has given notice in writing to that party of the proposed investigation.

(4) A financial services business or party being investigated under subsection (1) or (2) and any person who is or has been a director, controller, partner, senior officer, employee, agent, banker, auditor, advocate or other legal adviser of a financial services business or party being so investigated, or who is or has been a significant shareholder in relation to such a financial services business or party -

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that financial services business or party; and the inspector may take copies of or extracts from any documents produced to him under this paragraph;
- (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that financial services business or party; and
- (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) An inspector shall, if so required, produce evidence of his

authority.

(6) A person who without reasonable excuse -

(a) fails to comply with any provision of subsection (4),

or

(b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred by this section,

is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

(a) in proceedings for an offence under subsection (6) or section 32(1); or

(b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) Subject to the provisions of subsection (9), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the financial services business, the business, ownership or control of which is being investigated under subsection (1); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that financial services business as a civil debt.

(9) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a financial services business as a civil debt where the court is satisfied that -

- (a) the sum is not reasonable in amount or was not reasonably incurred; or
- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

(10) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 16.

(11) The provisions of this section apply in relation to a former registered financial services business as they apply in relation to a registered financial services business, but only in connection with the business, ownership or control of the former registered financial services business at a time when it was registered.

**Investigation of suspected offences.**

**20.** (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under section 2 or 8, the Commission may by notice in writing require that person or any other person -

- (a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as

may reasonably be required for the purpose of investigating the suspected offence;

- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his authority -

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1),
- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice under subsection (1) or obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

(4) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (3) or section 32(1), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(5) A notice under subsection (1) shall give particulars of the right of appeal conferred by section 16.

**Power of Bailiff to grant warrant.**

21. (1) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath -

- (a) that a notice has been served under section 18 on any person and that there are reasonable grounds for suspecting -
  - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
  - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 18, or
  - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii);

- (b) that it is not practicable to serve a notice under section 18, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
  - (i) it would not be complied with,
  - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
  - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 22.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 19 to carry out an investigation under that section, and that there are reasonable grounds for suspecting -

- (a) that an offence under this Law has been committed in relation to the investigation;
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation; or
- (c) that, if a warrant were not granted -

- (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed; or
- (ii) the investigation might be seriously prejudiced;

he may grant a warrant conferring the powers set out in section 22.

(3) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under section 2 or 8 and that -

- (a) a person has failed to comply with any requirement of a notice under section 20(1) or any other requirement imposed by or under section 20,
- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice or requirement,
- (c) it is not practicable to serve a notice under section 20(1), or
- (d) there are reasonable grounds for suspecting that if such a notice were served -
  - (i) it would not be complied with,

- (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
- (iii) the service of the notice might seriously prejudice the investigation of the suspected offences,

he may grant a warrant conferring the powers set out in section 22.

- (4) In this section the expression "**Bailiff**" means -
  - (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
  - (b) where the warrant is to be executed in Sark, the Seneschal or his deputy,
  - (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff, Judge of the Royal Court or Juge Délégué.

**Powers conferred by Bailiff's warrant.**

**22.** (1) A warrant granted under section 21(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -

- (i) which are occupied by the person upon whom the notice under section 18 was or could be served,
- (ii) upon which the documents to which the notice under section 18 relates are reasonably believed to be, or
- (iii) where no notice under section 18 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose;

- (b) to search the premises and, in relation to any documents-
  - (i) which were required by the notice under section 18, or
  - (ii) where no notice under section 18 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 18,

to take possession of them or to take any other steps which may appear to be necessary for preserving

them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions which could have been put to him under section 18,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(2) A warrant granted under section 21(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant, being premises -

(i) which are occupied by the financial services business or other person being investigated by inspectors under section 19, or

(ii) upon which any documents to which the

investigation under section 19 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose;

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 19, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions relevant to the investigation under section 19,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(3) A warrant granted under section 21(3) shall authorise any

officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant, being premises -

(i) which are occupied by the person upon whom the notice under section 20(1) was served,

(ii) upon which there are reasonably believed to be the documents to which the notice under section 20(1) relates, or

(iii) where no notice under section 20(1) has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose;

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of or extracts from any such documents;

- (d) to require any person named in, or of a class or description specified in, the warrant -
  - (i) to answer questions relevant for determining whether he or any other person has committed an offence under section 2 or 8,
  - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
  - (iii) to make an explanation of any such documents.

(4) A warrant granted under section 21 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(5) Any documents of which possession is taken under the powers conferred by a warrant granted under section 21 may be retained -

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(6) A person who without reasonable excuse obstructs or fails to

comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 21 is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed under a warrant granted under section 21 may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 32(1); or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

**Legal professional privilege, liens and duties of confidentiality.**

23. (1) Nothing in -

- (a) section 18, 19 or 20, or
- (b) a warrant granted under section 21,

shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of any client.

(2) Where a person claims a lien on a document, its production under -

- (a) section 18, 19 or 20, or

(b) a warrant granted under section 21,

is without prejudice to his lien.

(3) A requirement imposed by or under -

(a) section 18, 19 or 20, or

(b) a warrant granted under section 21,

shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

**Falsification, etc, of documents during investigation.**

**24.** A person upon whom a notice under section 19 or 20 has been served or who knows or has reasonable grounds to suspect -

(a) that such a notice is likely to be served on him, or

(b) that an inquiry or investigation is being or is likely to be carried out under section 19 or 20,

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect -

(i) would be inspected or requested during such a site visit or are or would be relevant thereto,

- (ii) are or would be specified in such a notice, or
- (iii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from the persons carrying out such a site visit, inquiry or investigation.

### *Enforcement powers*

#### **Power to issue private reprimand.**

25. (1) Without prejudice to any other powers of the Commission, where the Commission considers that, having regard to the conduct of a registered financial services business or of any person who is a director, controller, partner, senior officer or beneficial owner, it is appropriate to do so, the Commission may issue to the financial services business a private reprimand.

(2) In considering whether or not to issue a private reprimand under subsection (1), the Commission may, without prejudice to the generality of subsection (1), have regard to any matter to which it may have regard under section 5 or 10 when considering whether or not to grant an application for registration or to revoke a registration.

(3) Where the Commission decides to issue a private reprimand, the Commission shall serve on the financial services business in question notice in writing of the decision.

(4) A private reprimand issued under subsection (1) may be taken into account by the Commission in considering any matter under this Law concerning the financial services business in question.

**Disqualification orders.**

26. (1) Where the Royal Court (“the Court”) considers that, by reason of a person's conduct in relation to any financial services business or otherwise, that person is unfit to be concerned in the management of a financial services business, the Court may, if satisfied that it is desirable in the public interest to do so, make and subsequently renew (on one or more occasions) an order against him (a "disqualification order") prohibiting him, without the leave of the Court -

- (a) from being a director, controller, partner or senior officer of any, or any specified, financial services business, or
- (b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any, or any specified, financial services business.

(2) A disqualification order and any renewal thereof shall have effect for such period not exceeding 15 years as shall be specified therein.

(3) A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(4) An application for a disqualification order or for a renewal thereof may be made by the Commission, by Her Majesty's Procureur, by any financial services business of which the person in question is, or has been, a

director, controller, partner or senior officer, by any liquidator, member or creditor of such a financial services business or, with the leave of the Court, by any other interested party.

(5) A person who contravenes any provision of a disqualification order or a renewal thereof -

(a) shall be guilty of an offence, and

(b) shall be personally liable for any debts and liabilities of the financial services business in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order or the renewal thereof.

(6) A person's liability under subsection (5)(b) is joint and several with that of the financial services business and of any other person so liable in relation to that financial services business.

(7) In determining whether or not a person is unfit to be concerned in the management of a financial services business, the Court shall have regard to the provisions of Schedule 2, which shall have effect accordingly.

(8) A disqualification order may be renewed at any time before, or within a period of one month immediately succeeding, the date of the expiration of the order.

(9) A person subject to a disqualification order or renewal thereof may apply to the Court for a revocation of the order or renewal on the ground that he is no longer unfit to be concerned in the management of a financial services

business; and the Court may grant the application if satisfied that -

- (a) it would not be contrary to the public interest to do so,  
and
- (b) the applicant is no longer unfit to be concerned in the management of a financial services business.

(10) An application under subsection (9) for the revocation of a disqualification order or renewal shall not be heard unless the person upon whose application the disqualification order or (as the case may be) the renewal was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may -

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit,  
and
- (b) for that purpose adjourn the hearing of the application.

(11) For the removal of doubt, a disqualification order or renewal thereof, or an application under subsection (9) for the revocation of a disqualification order or renewal, may, with the agreement of the parties, and in the Court's absolute discretion, be granted by consent.

(12) The provisions of this section are without prejudice to the Court's powers under section 67A of the Companies (Guernsey) Law, 1994.

**Injunctions to restrain unlawful business, etc.**

27. (1) If on the application of the Commission or, with the leave of the Court, any other person, the Court is satisfied that -

- (a) there is a reasonable likelihood that a person will contravene section 2 or 8, or
- (b) a person may have contravened section 2 or 8 and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have contravened section 2 or 8, the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

(4) An application by the Commission for an injunction under

this section may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte.

(5) In this section "**the Court**" means -

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal,

(b) in any other case, the Royal Court.

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>f</sup>, and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

#### *Disclosure of information*

#### **Restrictions on disclosure of information.**

28. (1) Subject to the provisions of section 29, and without prejudice to the provisions of section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 -

(a) no person who under or for the purposes of this Law receives information relating to the business or other

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<sup>f</sup> Ordres en Conseil Vol. XXX, p. 145.

affairs of any person,

- (b) no person who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses information in contravention of this section is guilty of an offence.

**Cases where disclosure is permitted.**

**29.** Section 28 does not preclude -

- (a) the disclosure of -
  - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
  - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law,
- (c) without prejudice to the generality of paragraph (b),

where, in order to enable or assist it to discharge its functions conferred by or under this Law, the prescribed Laws or the regulatory Laws, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,

- (d) the disclosure by the Commission of information for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick as a finance centre,
- (e) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions,
- (f) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any of the provisions of, or made under, this Law,
- (g) the disclosure of information -
  - (i) for the purposes of the investigation,

prevention or detection of crime, or

- (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under this Law or otherwise,

- (h) the disclosure of information in connection with any other proceedings arising out of any of the provisions of, or made under, this Law,
- (i) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under sections 19 or 20 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable, or
- (j) where information is disclosed to an officer of police under paragraph (i), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere.

PART IV  
GENERAL PROVISIONS

*Ordinances and regulations*

**Ordinances and regulations.**

30. (1) The States may, without prejudice to any other provision of this Law conferring power to enact Ordinances, by Ordinance amend this Law.

(2) The States may by Ordinance make provision for the purpose of carrying this Law into effect and for any matter for which provision may be made under this Law by Ordinance of the States.

(3) The States may by Ordinance empower the Commission or the Policy Council to prescribe by Regulations anything for which provision may be made under this Law by Ordinance of the States except the power to amend this Law.

(4) An Ordinance under this section may, for the avoidance of doubt -

- (a) create offences,
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
- (c) contain such transitional provisions, and such incidental or supplementary provisions, as appear to the States to be expedient for the purposes of the Ordinance,

- (d) make different provision in relation to different cases or circumstances, and
- (e) vary or revoke any Ordinance previously made under this section.

(5) An Ordinance under this section does not have effect in Alderney or Sark unless approved by the States of Alderney or (as the case may be) by the Chief Pleas of Sark.

(6) For the purposes of subsection (5), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period -

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark.

**Regulations: consultation with Committees and laying before States.**

31. Regulations made under this Law or under an Ordinance made under this Law -

- (a) where made by the Commission, shall be made after consultation with the Policy Council, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the

Chief Pleas of Sark,

- (b) where made by the Policy Council, shall be made after consultation with the Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Policy Council, shall be laid before a meeting of the States as soon as possible after being made, and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

*Criminal proceedings*

**Offences as to false or misleading information, etc.**

**32.** (1) If a person -

- (a) in connection with an application for, or for the purposes of obtaining, a registration or renewal of registration under this Law,
- (b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, this Law, or
- (c) otherwise than as mentioned in paragraph (a) or (b)

but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Law,

does any of the following -

- (i) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, he recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material

particular,

he is guilty of an offence.

(2) A financial services business, or any director, controller, partner, senior officer or beneficial owner of a financial services business, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe-

- (a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation to the financial services business, and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the financial services business,

is guilty of an offence.

**Penalties.**

33. (1) A person or body guilty of an offence under section 8(5) or 32(2) is liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(2) A person or body guilty of an offence under any other provision of this Law is liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(b) and (2)(b) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004<sup>g</sup> and section 23 of the Reform (Sark) Law, 1951<sup>h</sup>.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there is a fresh offence on each day on which the display or exhibition continues.

**Criminal proceedings against unincorporated bodies.**

34. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) in the case of a partnership, any partner,

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<sup>g</sup> Ordres en Conseil No. III of 2005.

<sup>h</sup> Ordres en Conseil Vol. XV, p. 215, section 23 was substituted by Vol. XXIII, p. 200 and amended by Vol. XXIX, p. 27 and Orders in Council No. VII of 1989 and No. XII of 1991.

- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members and, for the purpose of such proceedings, the service of any document (including any summons) on that body shall be carried out in accordance with the provisions of section 39.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of that body.

**Criminal liability of directors, etc.**

**35.** (1) Where an offence under this Law is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, controller, partner, senior officer or beneficial owner or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

**Defence of due diligence.**

36. In proceedings for an offence under this Law it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

**Jurisdiction.**

37. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

*Liability of States etc.*

**Exclusion of liability.**

38. No liability shall be incurred -

- (a) by, or by any department of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (b) by the Commission, or
- (c) by any member, officer or servant of any body mentioned in paragraph (a) or (b),

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under this Law, unless the thing is done or omitted to be done in bad faith.

### *Miscellaneous*

#### **Service of notices and documents.**

**39.** (1) Any document other than a summons to be given or served under any of the provisions of, or made under, this Law may be given to or served upon -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a company with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) a company without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick,
- (d) an unincorporated body, by being given to or served on any partner, member of the committee or other similar governing body, manager or other similar

officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,

- (e) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick,

and in this section -

- (i) the expression "**by post**" means by special delivery, recorded delivery or ordinary letter post,
  - (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication, in which event the document shall be regarded as served when it is received, and
  - (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.
- (2) If a person notifies the Commission of an address for service

within the Bailiwick for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Commission or its Chairman under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian, and if there is no guardian, the Commission (or, with leave of the Court, any other person) may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law, and in this subsection "**the Court**" means -

(a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal,

(b) in any other case, the Royal Court.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>i</sup>.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

**Verification of information.**

**40.** The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement imposed by or under any provision of, or made under, this Law shall be verified in such manner as the Commission may reasonably specify, and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been provided in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

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<sup>i</sup> Ordres en Conseil Vol. XVII, p. 384, Vol. XXIV, p. 84, No. XI of 1993, and No. XIV of 1994.

**Evidence.**

41. (1) In any proceedings, a certificate signed on behalf of the Commission and certifying -

- (a) that a particular person or body is or is not a registered financial services business or was or was not a registered financial services business at a particular time,
- (b) the date on which a particular financial services business obtained or ceased to hold a registration,
- (c) the terms of any conditions imposed in respect of a particular registration,

is admissible in evidence.

(2) A certificate purporting to be signed as mentioned in subsection (1) shall be deemed to have been duly signed unless the contrary is shown.

**Interpretation.**

42. (1) In this Law, unless the context requires otherwise -

**"advertisement"** includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media,

**"advocate"** means an Advocate of the Royal Court of Guernsey,

**"Alderney company"** means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994,

**"associate"**, in relation to any person, means -

- (a) the spouse, child or stepchild of that person,
- (b) any person who is an employee of, or who is in partnership with, that person,
- (c) any body of which that person is a director,
- (d) where that person is a company -
  - (i) any director or employee of that company,
  - (ii) any subsidiary of that company, and
  - (iii) any director or employee of any such subsidiary,
- (e) where that person is an unincorporated body, any director of that body,
- (f) if that person has with some other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act

together in exercising their voting power in relation to a company, that other person,

**"associated party"**, in relation to any person, means -

- (a) any person who is in partnership with that person,
- (b) any company of which that person is a controller,
- (c) any body of which that person is a director,
- (d) where that person is a company -
  - (i) a holding company, subsidiary or related company of that person,
  - (ii) a subsidiary or related company of a holding company of that person,
  - (iii) a holding company of a subsidiary of that person, or
  - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting,

and where, under the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body

is an associated party in relation to that first-mentioned person or body:

Provided always that the Commission may by regulation amend the definition of the expression "associated party",

**"Bailiwick"** means the Bailiwick of Guernsey,

**"body"** includes a body incorporated under the law of any State or territory and any unincorporated body;

**"business"** includes any trade, profession or economic activity, whether or not carried on for profit,

**"business relationship"** means a continuing arrangement between the financial services business in question and another party, to facilitate the carrying out of transactions, in the course of such financial service business -

- (a) on a frequent, habitual, or regular basis, and
- (b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement,

**"carrying on" business** : see section 44,

**"chief executive"**, in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the body and, in relation

to a body whose principal place of business is outside the Bailiwick, includes a person who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

**"the Commission"** means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987,

**"company"** means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world, and includes a Guernsey company and an Alderney company,

**"contract of employment"** means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly,

**"controller"**, in relation to a company, means -

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller,

**"country"** includes any territory or other place,

**"Court of Appeal"** means the Court of Appeal established under

the Court of Appeal (Guernsey) Law, 1961<sup>j</sup>,

**"Court of the Seneschal"** means the Court of the Seneschal of Sark,

**"director"** includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes -

- (a) the chief executive or any member of the committee or other similar governing body, and
- (b) any person in accordance with whose directions or instructions any director is accustomed to act,

**"documents"** includes information recorded in any form (including, without limitation, in an electronic form) and -

- (a) in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form,
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language,

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<sup>j</sup>

Ordres en Conseil Vol. XVIII. p. 315.

**"employee"** means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, and cognate expressions shall be construed accordingly,

**"enactment"** includes (without limitation) an enactment of the Parliament of the United Kingdom and a Measure of the Scottish, Welsh or Northern Irish Assembly,

**"equity share capital"** means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

**"financial services business"**: see Schedule 1,

**"group"**, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

**"Guernsey company"** means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"holding company"** has the meaning given in Schedule 3, subject to any regulations under paragraph 5 of that Schedule,

**"indirect controller"**, in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act,

**"inspector"** means a person appointed by the Commission under section 19,

**"manager"**, in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company -

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the company,

**"money laundering regulations"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2007, and **"money laundering reporting officer"** has the meaning given in those Regulations,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>k</sup> and -

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<sup>k</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004; and the Excise Duties (Budget) Ordinance, 2005 (No. XXXII).

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 47 of the Government of Alderney Law, 2004,
- (c) in relation to Sark, the Constable and the Vingtenier,

"**partnership**" has the meaning given by section 1 of the Partnership (Guernsey) Law, 1995<sup>1</sup>, and cognate expressions shall be construed accordingly,

"**person**" includes a body of persons (whether a company or an unincorporated body),

"**Policy Council**" means the States of Guernsey Policy Council,

"**prescribed Laws**" means -

- (a) the Criminal Justice (Proceeds of Crime) (Bailiwick

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<sup>1</sup> Order in Council No. VIII of 1995.

of Guernsey) Law, 1999<sup>m</sup>,

- (b) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>n</sup>,
- (c) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>o</sup>,
- (d) the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>p</sup>,
- (e) the Transfer of Funds (Guernsey) Ordinance, 2007<sup>q</sup>,
- (f) the Transfer of Funds (Alderney) Ordinance, 2007<sup>r</sup>,
- (g) the Transfer of Funds (Sark) Ordinance, 2007,

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<sup>m</sup> Order in Council No. VIII of 1999; Order in Council No. II of 2005; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007; Ordinance XXVIII of 1999, Ordinance XII of 2002, Ordinance XXXIII of 2003; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007; the Criminal Justice (Proceeds of Crime) Regulations, 2007.

<sup>n</sup> Order in Council No. VII of 2000; No. II of 2005; and Ordinance No. XXXIII of 2003; the Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2007.

<sup>o</sup> Order in Council No. XVI of 2002; amended by Order in Council No. XIII of 2006 and by Ordinance XXXIII of 2003.

<sup>p</sup> Approved by Resolution of the States of Guernsey of 30th May, 2007.

<sup>q</sup> Approved by the Resolution of the States of Guernsey of 25th July, 2007.

<sup>r</sup> Ordinance of the States of Alderney No. VI of 2007.

(h) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission,

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Protected Cell Companies Ordinance, 1997<sup>s</sup>,

**"the public"** includes any section of the public, however selected, in the Bailiwick or elsewhere, including, in relation to a body, a section selected as members, debenture holders, policyholders, depositors or investors of, in or with that body;

**"registered"** means registered by the Commission under section 2, and related expressions shall be construed accordingly,

**"registration"** means a registration granted under section 5,

**"regulated business"**: see Part II of Schedule 1,

**"regulations"** means regulations made by the Commission or, as the case may be, by the Policy Council under this Law,

**"regulatory Laws"** means -

(a) the Protection of Investors (Bailiwick of Guernsey)

<sup>s</sup> Ordinance No. V of 1997; amended by No. XV of 1998; No. XXI of 2005; and No. XVII of 2006.

Law, 1987<sup>t</sup>,

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>u</sup>,

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>v</sup>,

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>w</sup>,

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>x</sup>,

(f) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Commission,

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<sup>t</sup> Ordres en Conseil Vol. XXX, p. 281; Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; No's XV and XXXII of 2003 and the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998.

<sup>u</sup> Order in Council No. XIII of 1994.

<sup>v</sup> Order in Council No. I of 2000.

<sup>w</sup> Order in Council No. XXI of 2002.

<sup>x</sup> Order in Council No. XXII of 2002.

**"related company"**, in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest, and for the purposes of this Law -

(a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,

(b) where -

(i) a company holds a qualifying capital interest in another company, and

(ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above, unless the contrary is shown, and

- (c) in paragraph (b) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a),

"**relevant supervisory authority**", in relation to a country outside the Bailiwick, means an authority discharging in that place -

- (a) functions corresponding to any functions of the Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or under the regulatory Laws or the prescribed Laws, or
- (b) such other functions as the Commission may by regulation prescribe,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court,

"**senior officer**" includes, without limitation, a manager and a money laundering reporting officer,

"**shareholder controller**" -

- (a) in relation to a company, and subject to paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

(b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

**"States"** means the States of Guernsey,

**"subsidiary company"** has the meaning given in Schedule 3, subject to any regulations under paragraph 5 of that Schedule, and **"subsidiary"** has the same meaning,

**"under this Law"** and **"for the purposes of this Law"** include under and for the purposes of any Ordinance, regulation or rule made under this Law,

**"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<sup>y</sup>.

(2) Unless the context otherwise requires, references in this Law to the Policy and Finance Committee of the States of Alderney and the General

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<sup>y</sup> Ordres en Conseil Vol. XXXI, p. 278; Ordinance No. XXIX of 2006.

Purposes and Advisory Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by or under this Law on the said Policy and Finance Committee or (as the case may be) the said General Purposes and Advisory Committee.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender include the masculine and the feminine, and any words importing the masculine gender include the feminine and the neuter.

(5) The Interpretation (Guernsey) Law, 1948<sup>z</sup> applies to the interpretation of this Law throughout the Bailiwick.

**References to financial services businesses.**

43. References in this Law to a financial services business (however expressed) include references to a person carrying on such a business.

**"Carrying on" business.**

44. (1) For the purposes of any provision of, or made under, this Law or the prescribed Laws, except to the extent that in any particular case the Commission may otherwise direct, a business holds itself out as carrying on business in or from within the Bailiwick if -

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<sup>z</sup> Ordres en Conseil Vol. XIII, p. 355.

- (a) by way of business it occupies premises in the Bailiwick or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that it may be contacted at a particular address in the Bailiwick,
- (b) it invites a person in the Bailiwick, by issuing an advertisement or otherwise, to enter into or to offer to enter into a contract or otherwise to undertake business, or
- (c) it is otherwise seen to be carrying on business in or from within the Bailiwick.

(2) For the purposes of this section an advertisement issued or other invitation made by any person on behalf of or to the order of another person shall be treated as an advertisement issued or other invitation made, as the case may be, by that other person.

**Revocation.**

**45.** Paragraphs (1) to (4) of regulation 16 of the Criminal Justice (Proceeds of Crime) Regulations, 2007 are hereby revoked.

**Provision as to publication of notices in Alderney and Sark and on Commission's website.**

**46.** (1) If, pursuant to any requirement imposed by or under this Law, any document or information is published in La Gazette Officielle -

- (a) a copy of the document or information shall be published in the Alderney Official Gazette, and

(b) a copy of the document or information shall be sent or delivered to the Seneschal of Sark who shall forthwith cause a copy of the document or information to be inserted in the Sark notice box.

(2) Any requirement imposed on the Commission by or under this Law to publish any document or information in La Gazette Officielle shall be construed as including a requirement to publish that document or information on the Commission's official web site.

**Citation.**

47. This Law may be cited as the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

## SCHEDULE 1

Section 1

### PART I

#### FINANCIAL SERVICES BUSINESSES

1. The businesses specified in the following paragraphs of this Part of this Schedule are financial services businesses for the purposes of any provision of, or made under, this Law, except where they are incidental or other activities falling within Part III.
2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).
3. Financial leasing.
4. Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).
5. Facilitating or transmitting money or value through an informal money or value transfer system or network.
6. Issuing, redeeming, managing or administering means of payment, means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers' drafts.

7. Providing financial guarantees or commitments.
8. Trading for account of customers (by way of spot, forward, swaps, futures, options, etc.) in -
  - (a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),
  - (b) foreign exchange, exchange, interest rate or index instruments, and
  - (c) commodity futures, transferable securities or other negotiable instruments or financial assets, including, without limitation, bullion.
9. Participating in securities issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).
10. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.
11. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings.
12. Money broking.
13. Money changing.

14. Providing individual or collective portfolio management services or advice.
15. Providing safe custody services.
16. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.
17. Carrying on the business of a credit union.
18. Accepting repayable funds other than deposits.
19. The provision of services in relation to any of the financial services businesses falling within paragraphs 2 to 18.

## PART II

### REGULATED BUSINESSES

1. The businesses specified in the following paragraphs of this Part of this Schedule are regulated businesses for the purposes of this Law.

2. Accepting deposits in the course of carrying on "deposit-taking business" as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

3. Carrying on "controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

4. Carrying on "insurance business" as defined in the Insurance

Business (Bailiwick of Guernsey) Law, 2002, or doing anything -

- (a) which can only lawfully be done under the authority of a licence of the Commission under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, or
- (b) the doing of which is specifically exempted by that Law from the requirement to hold such a licence.

5. Carrying on "regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a licence granted by the Commission under section 6 of that Law.

### PART III

#### INCIDENTAL AND OTHER ACTIVITIES

1. (1) Any financial services business falling within paragraphs 2 to 19 carried out in the course of carrying on the profession of -

- (a) a lawyer, where such business is incidental to the provision of legal advice or services,
- (b) an accountant, where such business is incidental to the provision of accountancy advice or services,
- (c) an actuary, where such business is incidental to the

provision of actuarial advice or services.

(2) For the purposes of this paragraph, business is incidental to the provision of such advice or services, if -

- (a) separate remuneration is not being given for the business as well as for such advice or services,
- (b) such advice or services is not itself financial services business falling within paragraphs 2 to 19, and
- (c) the business being carried out is incidental to the main purpose for which that advice or services is provided.

2. The carrying on of any financial service business -

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in paragraphs 2 to 19, or
- (b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business.

**26.** Any financial services business falling within any of paragraphs 2, 3, 7, 9 and 11 or falling within paragraph 19 by virtue of it being a service carried out in relation to any such business described in those paragraphs where that business is only carried on by a body corporate ("**first company**") in the course of providing services to another body corporate -

- (a) of which the first company is the sole shareholder,
- (b) which is the first company's sole shareholder, or
- (c) which has the same sole shareholder as the first company.

## SCHEDULE 2

Sections 5, 15, 16, 26

### **Directors etc. to be fit and proper persons.**

1. Every person who is, or is to be, a director, controller, partner, senior officer, or beneficial owner of a financial services business shall be a fit and proper person to be concerned in the management of a financial services business.

2. In determining whether a person is a fit and proper person to be concerned in the management of a financial services, regard shall be had to -

- (a) his probity, competence, solvency and soundness of judgement;
- (b) the diligence with which he is fulfilling or likely to fulfil his responsibilities in relation to the financial services business;
- (c) whether the interests of members or creditors or potential members or creditors of the company are, or are likely to be, in any way threatened by his involvement or connection with the financial services business; and
- (d) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority.

3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question.

## SCHEDULE 3

### Section 42

#### Meaning of "holding company" and "subsidiary company".

1. For the purposes of any provision of, or made under, this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if -

- (a) that other -
  - (i) is a member of it and controls the composition of its board of directors, or
  - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such

a power,

- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another -

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable -
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the

first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded;

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of any provision of, or made under, this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

5. The Policy Council may make regulations amending the meaning of "**holding company**" and "**subsidiary company**" for the purposes of all or any of the provisions of this Law.