

GREFFE
ROYAL COURT
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OMS
GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2015 No. 37

**The Financial Services Ombudsman
(Exempt Business) (Bailiwick of Guernsey) Order, 2015**

<i>Made</i>	21 st May, 2015
<i>Coming into operation</i>	21 st May, 2015
<i>Laid before the States</i>	, 2015

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 9(4) and 27 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014^a, and having taken particular account of the matters set out in section 9(5) of that Law and having consulted the persons and bodies set out in section 9(6) of that Law, hereby orders:-

Exempt business.

1. (1) Business ("exempt business") is exempted from being relevant financial services business for the purposes of section 9 of the Law, unless it falls within any one or more of the descriptions in the subparagraphs of paragraph (2).

(2) Subject to paragraph (3), those descriptions are -

^a Order in Council No. I of 2015.

- (a) deposit-taking business, within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^b, for which the person carrying on the business is required to have a licence under that Law,

- (b) money service business, within the meaning of paragraph 4 of Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^c, for which the person carrying on the business –
 - (i) is required to be licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, or

 - (ii) is required to be registered under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey)

^b Ordres en Conseil Vol. XXXV(1), p. 271; as amended by Vol. XLII(2), pp. 644 and 766; Vol. XLIII(1), p. 462; Order in Council No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; G.S.I. No. 3 of 2000; No. 1 of 2008; No. 35 of 2010; No. 83 of 2010.

^c Order in Council No. VIII of 1999 (Ordres en Conseil Vol. XXXIX, p. 137); as amended by Order in Council No. I of 2000 (Ordres en Conseil Vol. XL, p. 15); No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Ordinance No. XXVIII of 1999 (Recueil d'Ordonnances Tome XXVIII, p. 266); No. XII of 2002 (Recueil d'Ordonnances Tome XXIX, p. 112); No. XXXIII of 2003 (Recueil d'Ordonnances Tome XXIX, p. 406); No. XLVII of 2007 (Recueil d'Ordonnances Tome XXXII, p. 666); No. XXXVII of 2008; No. XVI of 2010; No. XXXIV of 2010; No. XVII of 2014; G.S.I. No. 56 of 1999; No. 4 of 2002; No. 27 of 2002; No. 33 of 2007; No. 48 of 2008; No. 73 of 2008; No. 12 of 2010; and No. 14 of 2013. This Law is modified by Ordinance No. XXXIII of 1999 (Recueil d'Ordonnances Tome XXVIII, p. 274). See also Ordres en Conseil Vol. XXIX, p. 207; and G.S.I. No. 29 of 2003; No. 12 of 2004; and No. 49 of 2008.

Law, 2008^d, or who would be required to register under section 2 of that Law but for a direction given by the Commission under section 44 of that Law,

(c) the business of being an insurance intermediary, within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^e, for which the person carrying on that business is required to be licensed as an insurance intermediary under that Law,

(d) insurance business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002^f, for which the person carrying on the business is required to have a licence under that Law, except where the person is a person who falls under –

(i) Category 2 or 4, or

^d Order in Council No. XV of 2008; as amended by No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, p. 141; G.S.I. No. 75 of 2008; No. 17 of 2010; No. 83 of 2010; and No. 16 of 2013.

^e Ordres en Conseil Vol. XLII(2), p. 1022; as amended by Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 77; Ordinance No's. IX and XXXII of 2010; G.S.I. No. 2 of 2008; and G.S.I. No's. 16 and 83 of 2010.

^f Ordres en Conseil Vol. XLII(2), p. 766; as amended by Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, pp. 61 and 297; Ordinance No's. VIII and XXXI of 2010; No. XXXVI of 2011; G.S.I. No. 33 of 2004; No. 4 of 2008 and No's. 15 and 83 of 2010.

- (ii) Category 5 or 6, where the person does not provide insurance business to or for the benefit of eligible complainants,

of the Insurance Business (Solvency) Rules, 2015,

- (e) controlled investment business, within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^g, where it involves –

- (i) any restricted activity in connection with a Class A Collective Investment Scheme, or

- (ii) the restricted activity of advising, managing or dealing in connection with a category 2 controlled investment within the meaning of that Law,

and for which the person carrying on the business is required to have a licence under that Law,

- (f) the business of carrying out regulated activities, within the meaning of the Regulation of Fiduciaries,

^g Ordres en Conseil Vol. XXX, p. 281; as amended by Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Vol. XLII(1), pp. 644; Vol. XLIII(1), p. 440; Vol. XLIII(2), p. 1086; Order in Council No. XVIII of 2008; No. XIII of 2010; No. XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, pp. 51 and 87; Tome XXIX, p. 406; Tome XXXIII, p. 136; Tome XXXIII, p. 472; and G.S.I. No. 83 of 2010.

Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^h, in relation to a pension scheme for which the person carrying out the business must have a fiduciary licence under that Law,

- (g) category 1 controlled investments that are authorised as Class A Collective Investment Schemes,
- (h) subject to Articles 2 and 5, relevant pension business, within the meaning of Schedule 3 to the Law,
- (i) subject to Articles 3, 4 and 5, relevant credit business, within the meaning of Schedule 4 to the Law, whether or not the person carrying out the business is registered under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008, and
- (j) subject to Article 5, relevant ancillary business, within the meaning of section 9(2) of the Law, in respect of which the main business falls within any one or more of subparagraphs (a) to (h).

^h Ordres en Conseil Vol. XLI, p. 13; Vol. XLIII(1), p. 430; as amended by Order in Council No. XVI of 2007; No's. VIII and XXV of 2008; No's. XIII and XVIII of 2010; No. I of 2013; Recueil d'Ordonnances Tome XXVIII, p. 493; Tome XXIX, p. 406; Tome XXXIII, p. 472; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; and G.S.I. No. 4 of 2013.

(3) Business which falls within any of subparagraphs (a) to (j) of Article 1(2) is nevertheless exempt business where that business is restricted to the provision of services to persons other than those set out in section 8(3) of the Law.

Exempt occupational pension business.

2. (1) Relevant pension business is exempt business if –
 - (a) it does not fall within any of subparagraphs (a) to (e) of Article 1(2), and
 - (b) it is relevant occupational pension business.
- (2) Business is relevant occupational pension business if –
 - (a) the pension scheme to which it relates has, or is held out by the employer as having or as being capable of having, effect so as to provide benefits primarily to or in respect of persons who are or have been employees of that employer, and
 - (b) the employer does not carry out any other relevant pension business.

Exempt store credit business.

3. (1) Relevant credit business is exempt business if –
 - (a) it does not fall within any of subparagraphs (a) to (h) of Article 1(2), and
 - (b) it is relevant store credit business.

(2) Business is relevant store credit business if –

(a) it is carried on by a person in the course of, and as being incidental to, that person's principal business of

–

(i) selling goods,

(ii) letting goods under a hire-purchase agreement,
or

(iii) supplying services, other than services provided by way of relevant credit business,

(b) it mainly comprises the provision of credit under a credit agreement, within the meaning of paragraph 1(a) of Schedule 4 to the Law,

(c) the credit is provided to the person to whom the goods are sold or let or the services supplied, with a view to facilitating that sale, letting or supply, and

(d) it is not carried on by a financial services business within the meaning of section 1 of the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008, in respect of which section 2 of that Law –

(i) requires it to register with the Commission, or

- (ii) would require it to so register except for a direction given by the Commission under section 44 of that Law.

Exempt debt advice business.

4. (1) Relevant credit business is exempt business if –

- (a) it does not fall within any of subparagraphs (a) to (h) of Article 1(2), and
- (b) it is relevant debt advice business.

(2) Business is relevant debt advice business if –

- (a) it constitutes –
 - (i) debt-counselling, as defined by paragraph 6 of Schedule 4 to the Law, or
 - (ii) debt-adjusting that falls within paragraph 5(a) of that Schedule, or within paragraph 5(c) of that Schedule in relation to paragraph 5(a),
- (b) the person carrying it on does not, in connection with the business or in relation to the complainant –
 - (i) carry on any business falling within paragraph 1(a) of Schedule 4 to the Law, or

- (ii) carry on any business that is relevant ancillary business, by virtue of section 9(2)(b) of the Law, in respect of which the main business falls within paragraph 1(a) of Schedule 4 to the Law, and
- (c) it is carried on –
 - (i) without any charge or fee, and in such a manner that no income is derived from it,
 - (ii) by a person whose income is exempt from income tax under section 40(k) or (r) of the Income Tax (Guernsey) Law, 1975, or
 - (iii) by a person whose principal business does not fall within any of subparagraphs (a) to (c), (f) and (g) of section 9(1) of the Law, as wholly incidental to that principal business.

Exempt ancillary brokerage business.

- 5. (1) Business is exempt business if –
 - (a) it does not fall within any of sub-paragraphs (a) to (h) of Article 1(2), and
 - (b) it is relevant brokerage business.
- (2) Business is relevant brokerage business if it –

- (a) is carried on, by a person whose principal business does not fall within any subparagraph of Article 1(2), as wholly incidental to that principal business, and
- (b) is relevant ancillary business, by virtue of section 9(2)(b) of the Law, in respect of which the main business –
 - (i) is carried on by another person, and
 - (ii) falls within any one or more of subparagraphs (a) to (j) of Article 1(2).

(3) Nothing in this Article is to be read, without more, as exempting the business that is the main business in relation to the exempt ancillary business.

Interpretation.

6. (1) In this Order, unless the context requires otherwise –

"a Class A Collective Investment Scheme" means a collective investment scheme which is or has been authorised or registered by the Commission and is subject to –

- (a) the Collective Investment Scheme (Class A) Rules, 2002ⁱ, or
- (b) the Authorised Collective Investment Schemes (Class

ⁱ G.S.I. No. 30 of 2002, as amended by No. 11 of 2003.

A) Rules, 2008^j,

"**the Commission**" means the Guernsey Financial Services Commission,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**exempt business**" has the meaning given in article 1,

"**the Law**" means the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014,

"**main business**" has the meaning given by section 9(2) of the Law,

"**pension scheme**" has the meaning given in paragraph 2 of Schedule 3 to the Law,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

and other expressions have the same meanings as in the Law.

(2) The Interpretation (Guernsey) Law, 1948^k applies to the interpretation of this Order.

(3) Any reference in this Order to an enactment is a reference

^j G.S.I. No. 58 of 2008.

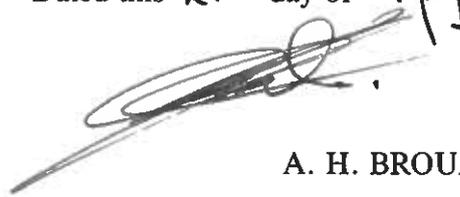
^k Ordres en Conseil Vol. XIII, p. 355.

thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

7. This Order may be cited as the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015 and shall come into force on the 21st May, 2015.

Dated this 21 day of May, 2015



A. H. BROUARD

Deputy Minister of the States Commerce and Employment Department

For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision, for the purpose of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 ("the Law"), for the exemption of business from the Financial Services Ombudsman Scheme ("the Scheme"). Business is exempted from being relevant financial services business for the purposes of the Law under Article 1(1), unless it falls into one or more of the descriptions set out in Article 1(2).

The descriptions of business which are not exempted are:

- deposit-taking business, within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994, where the person carrying on that business must be licensed under that Law,
- money service business, within the meaning of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 for which the person carrying on the business must be licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, must be registered under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008, or who would be required to register under that Law except for a direction given by the Commission under section 44 of that Law,
- the business of being an insurance intermediary, within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, where the person carrying on that business must be licensed as an insurance intermediary under that Law,
- insurance business within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002, where the person carrying on the business must be licensed under that Law, unless the person falls under Category 2 or 4, or 5 or 6 where the person does not provide insurance business to or for the benefit of eligible complainants, of the Insurance Business (Solvency) Rules, 2015,
- controlled investment business, within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, where it involves either any restricted activity in connection with a Class A Collective Investment Scheme, or the restricted activity of advising, managing or dealing in connection with a category 2 controlled investment within the meaning of that Law, and where the person carrying on the business must have a licence under that Law,
- the business of carrying out regulated activities, within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company

Directors, etc. (Bailiwick of Guernsey) Law, 2000, in relation to a pension scheme where the person carrying out the business must have a fiduciary licence under that Law,

- category 1 controlled investments that are authorised by the Commission as Class A Collective Investment Schemes,
- relevant pension business as defined in Schedule 3 to the Law, unless it is relevant occupational pension business within the meaning of Article 2,
- relevant credit business as defined in Schedule 4 to the Law, unless it is store credit business within the meaning of Article 3 or relevant debt advice business within the meaning of Article 4, and
- relevant ancillary business, within meaning of section 9(2) of the Law, in respect of which the main business falls within any one or more of the descriptions in Article 1(2), unless it is relevant brokerage business within the meaning of Article 5.

The exemption still applies in relation to the descriptions of business where the business is restricted to the provision of services to persons other than the "eligible complainants" set out in section 8(3) of the Law.

Further provisions exempt:

- occupation pension business which is carried out by an employer which does not carry out relevant pensions business but which nevertheless operates a scheme which provides benefits to current or former employers,
- store credit business which is carried on in course of a person's principal business of selling or letting goods, or supplying services, and mainly consists of the provision of credit to a person to whom the goods are sold or let, or the services supplied with a view to the facilitation of that transaction, and which does not require registration with the Commission in law or pursuant to a direction of the Commission,
- debt advice business which constitutes debt-counselling or debt-adjusting and

the person, providing the person providing it does not carry on any business falling within paragraph 1(a) of Schedule 4 to the Law (or any business ancillary to that business) and it is carried on without any charge or fee, is carried out by a charitable body, or whose principal business does not fall within any of subparagraphs (a) to (c), (f) and (g) of section 9(1) of the Law, and

- ancillary brokerage business which is carried out by a person whose principal business does not fall within article 1(2) but which is ancillary business carried out by another person and falls within subparagraphs (a) to (j) of Article 1(2).

This Order comes into force on the 21st day of May, 2015.

