

# PROJET DE LOI

ENTITLED

## **The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022**

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## **The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022**

**THE STATES**, in pursuance of their Resolution of the 2<sup>nd</sup> February, 2021<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

#### INTRODUCTORY

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

1. (1) This Law makes provision –
  - (a) in Part II, in respect of the licensing and supervision by the Guernsey Financial Services Commission (the "**Commission**") of –
    - (i) the provision of credit, and
    - (ii) the provision of services ancillary to the provision of credit,

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<sup>a</sup> Article VI of Billet d'État No. IV of 2021.

together referred to as "**credit business**",

- (b) in Part III, in respect of the licensing and supervision by the Commission of –
  - (i) businesses which are financial firm businesses within the meaning of Part A of Schedule 1, including businesses previously subject to registration under the provisions of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>b</sup> (the "**NRFSB Law**"), and
  - (ii) virtual asset service providers ("**VASPS**"),
- (c) in Part IV, in respect of the licensing and supervision by the Commission of the provision of specified descriptions of financial services (financial platforms and intermediation, etc) by digital or other means,
- (d) in Part V, in respect of general regulatory functions of the Commission, including the levying of fees, the issue of directions, the disapplication of licence requirements, the publication of information and the oversight of supervisory roles,
- (e) in Part VI, in respect of the Commission's decision-

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<sup>b</sup> Order in Council No. XV of 2008; the Law is repealed by this enactment.

making process, appeals, powers to obtain documents and information and appoint skilled persons, accounting and audit requirements and the making of rules, codes and guidance,

(f) in Parts VII and VIII, in respect of the confidentiality and disclosure of information and offences and penalties,

(g) in Part IX, in respect of general miscellaneous and procedural matters, including the execution, service and submission of documents, the making of Ordinances and subordinate legislation, interpretation, amendments and repeals,

(h) in Schedules 1 to 5, in respect of –

(i) the meaning of financial firm businesses,

(ii) repeals,

(iii) amendments,

(iv) the minimum criteria for licensing, and

(v) the meaning of "**holding company**" and "**subsidiary company**", and

(i) in respect of all other matters included herein.

- (2) Provisions in respect of –
- (a) the enforcement by the Commission of the provisions of this Law, and
  - (b) the detection, investigation, prosecution and sanctioning (civil, criminal and administrative) of contraventions of the provisions of this Law by persons or entities carrying on business regulated by this Law and others,

are, in addition to the provisions of this Law, set out in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>c</sup> (the "**Enforcement Powers Law**").

## PART II

### REGULATION OF CREDIT BUSINESS

#### *Preliminary*

#### **Prohibition of unlicensed credit business.**

2. (1) Subject to the provisions of this Law, persons shall not provide, offer to provide or hold themselves out as being willing to provide, by way of business, in or from within the Bailiwick –

- (a) credit, or

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<sup>c</sup> Order in Council No. XVII of 2020.

(b) services ancillary to the provision of credit,

except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 13 (a "**Part II licence**").

(2) Subject to the provisions of this Law, and without prejudice to subsection (1), a Bailiwick body shall not provide, offer to provide or hold itself out as being willing to provide, by way of business, in or from within any place whatsoever –

(a) credit, or

(b) services ancillary to the provision of credit,

except under the authority of and in accordance with the conditions of a Part II licence.

(3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.

(4) Business the carrying on of which is regulated by this Law by virtue of this section is referred to in this Law as "**credit business**".

**Provisions of this Part without prejudice to Part IV.**

3. The provisions of this Part are in addition to and not in derogation from the provisions of Part IV ("regulation of financial platforms and intermediation, etc").

*Defined expressions*

**Meaning of "credit".**

4. (1) In this Law the provision of "**credit**" means, subject to subsection (2), the provision or carrying on, to or in respect of a customer ("**A**"), under a regulated agreement made with or on behalf of A, of any of the following services or activities –

- (a) credit, including a loan of money, whether in cash or any other form, and any other kind of financial accommodation,
- (b) the sale of goods or services on credit, including hire purchase,
- (c) the hiring or leasing out of goods for more than three months,
- (d) the issue of credit or charge cards,
- (e) any other service or activity or class or description thereof specified for the purposes of this Law by regulations of the States of Guernsey Policy and Resources Committee (the "**Committee**").

(2) Where credit is provided otherwise than in sterling it shall be treated for the purposes of this Law as provided in sterling of an equivalent amount.

**Meaning of "services ancillary to the provision of credit".**

5. In this Law the provision of "**services ancillary to the provision of credit**" means the provision or carrying on, to or in respect of a person ("**B**"), of any of the following services or activities –

- (a) assisting B by undertaking preparatory work with a view to B entering into a regulated agreement with a provider of credit, lender or owner of goods or services,
- (b) effecting an introduction, of B, to a provider of credit, lender or owner of goods or services, with a view to B entering into a regulated agreement,
- (c) without prejudice to paragraph (b), acting, in respect of B, in the course of a business of credit brokerage carried on by the person so acting, with a view to B entering into a regulated agreement; and for the purposes of this paragraph "**credit brokerage**" means –
  - (i) introducing individuals who want to obtain credit to persons carrying on any business so far as it relates to the provision of credit,
  - (ii) introducing individuals who want to obtain goods on hire to persons carrying on a business which comprises or relates to supplying goods under a contract for the hire of goods, or

- (iii) introducing individuals who want to obtain credit, or to obtain goods on hire, to other persons engaged in credit brokerage,
- (d) acting as an intermediary between a provider of credit, lender or owner of goods or services and B pursuant to a regulated agreement,
- (e) entering into a regulated agreement on behalf of a provider of credit, lender or owner of goods or services, or B,
- (f) debt administration to the extent that this may have an effect on the terms or conditions of the provision of credit (for example, debt administration which leads to restructuring of credit and payment of interest or which leads to other classes or descriptions of refinancing), and
- (g) any other service or activity or class or description thereof specified for the purposes of this Law by regulations of the Committee.

**Meaning of "regulated agreement".**

6. (1) A regulated agreement is one made by or on behalf of, and between –

- (a) a provider of credit and a customer who is an individual acting for purposes wholly or mainly outside that

individual's trade, business or profession, whereby credit is provided and interest or other charges may be levied on the customer, or

- (b) a provider of credit and any customer, whereby credit is provided and interest or other charges may be levied on the customer and the credit is secured against real property situated in the Bailiwick and used for residential purposes.

(2) A person carrying on business regulated by this Law claiming that an individual was not acting for purposes wholly or mainly outside that individual's trade, business or profession must prove it (for the avoidance of doubt, on a balance of probabilities).

**Meaning of "customer".**

7. In this Law a "**customer**" means, in relation to any person ("**A**") –

- (a) a person who has entered into or may enter into an agreement for the provision of services by A when A is carrying on business regulated by this Law, or
- (b) a person who has received or may reasonably expect to receive the benefit of services provided or arranged, or to be provided or arranged, by A when A is carrying on business regulated by this Law.

**Power to make regulations.**

8. (1) The Committee may make regulations –

- (a) concerning credit business,
- (b) amending the meaning of "**credit**", "**services ancillary to the provision of credit**", "**credit business**", "**regulated agreement**" and "**customer**" for the purposes of all or any of the provisions of this Law.

(2) Without prejudice to the generality of subsection (1)(b), regulations thereunder amending the meaning of "**credit**", "**services ancillary to the provision of credit**", "**credit business**", "**regulated agreement**" and "**customer**" may provide for the taking into account, as the activities of a person ("**B**"), of the activities of any person connected with B in such manner as may be specified in the regulations.

*Exemptions, etc*

**Exemptions.**

9. (1) Section 2 does not apply in relation to –
- (a) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or
  - (b) credit, business, services or transactions of a class or description specified for the purposes of this Law by regulations of the Committee.

(2) The Committee may by regulation amend subsection (1) by adding any person or class or description of person to it or removing any person or class or description of person from it.

- (3) Regulations under subsection (1) or (2) –
- (a) may provide that any exemption is subject to such conditions, restrictions or requirements as may be specified in the regulations, and
  - (b) may prescribe credit, business, services or transactions (collectively referred to as "**services**") by reference to any factor appearing to the Committee to be appropriate and, without limitation, by reference to all or any of the following –
    - (i) the amount or value of the services in question,
    - (ii) the total liability of the person to whom the services are provided to the provider of the services or other persons,
    - (iii) the circumstances in which or the purposes for which the services are provided,
    - (iv) the identity of the person to whom the services are provided, including that person's membership of a class whose membership is determined otherwise than by the Commission,
    - (v) the number of, or the amount or value involved in, transactions of a particular class or

description carried out by the provider of the services or the frequency with which that person carries out transactions of any particular class or description.

(4) Where circumstances change such that an exemption under this section in respect of –

- (a) a person, or
- (b) credit, business, services or transactions provided or carried out by a person,

is no longer applicable, it is the duty of that person, within a period of 14 days immediately following the day on which that person becomes aware of the change, to give notice in writing to the Commission of the change of circumstances.

**Persons regulated in equivalent jurisdictions.**

10. (1) Subject to the provisions of subsection (4), the provisions of section 2 do not apply to any activity carried on by a person ("A") –

- (a) if A –
  - (i) is not a Bailiwick body or an individual ordinarily resident in the Bailiwick,
  - (ii) carries on that activity in or from within the Bailiwick in a manner in which A is permitted to carry it on in or from within, and under the

law of, a designated jurisdiction which, in the opinion of the Committee, affords in relation to activities of that description adequate protection to customers and clients,

(iii) has A's principal place of business in that jurisdiction and does not carry on credit business from a permanent place of business in the Bailiwick,

(iv) is (in the case of an individual) recognised as a national of that jurisdiction by the law of that jurisdiction or (in the case of a legal person) is registered, constituted or incorporated in that jurisdiction, and

(v) has given written notice to the Commission of the date from which A intends to carry on that activity in or from within the Bailiwick and has complied with the requirements applicable under section 12(1) to an applicant for a licence, or

(b) if A is a person of any other class or description specified for the purposes of this section by regulations of the Committee.

(2) The Commission may at any time require a person to whom subsection (1) applies to furnish such information and documents as it considers

necessary or desirable.

(3) In this section "**designated jurisdiction**" means a jurisdiction designated by regulations of the Committee under this section which has legislation for the protection of customers, clients and consumers at least equivalent to that provided by the provisions of this Law in cases where the Committee is satisfied that to do so would not be prejudicial to –

- (a) the interests of the public or the reputation of the Bailiwick as a finance centre, or
- (b) the performance by the Commission of its functions.

(4) The States may by Ordinance –

- (a) impose conditions or restrictions upon or limit the extent of any exemption conferred by this section, or
- (b) otherwise amend this section.

(5) Where circumstances change such that an exemption under this section in respect of –

- (a) a person, or
- (b) business, services or activities provided or carried out by a person,

is no longer applicable, it is the duty of that person, within a period of 14 days

immediately following the day on which that person becomes aware of the change, to give notice in writing to the Commission of such change of circumstances.

**Interest, etc, on late payment of invoices.**

11. (1) Without prejudice to the generality of the provisions of section 9, the payment of any fee, interest, penalty or other charge in respect of the late settlement of an invoice does not constitute the provision of credit or services ancillary to the provision of credit for the purposes of section 2 except to the extent that express provision is made to the contrary by rules of the Commission.

(2) Rules under subsection (1) may make provision subject to such conditions, restrictions or requirements as may be specified in the rules.

*Licensing*

**Applications for Part II licences.**

12. (1) A person wishing to obtain a Part II licence shall apply in that behalf to the Commission.

(2) The application shall state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on business regulated by this Law.

(3) An application for a Part II licence shall be made in such form and manner as the Commission may require and shall be accompanied by –

(a) a statement of the applicant's proposed business,

(b) such other information or documents as the

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

- (c) the appropriate fee prescribed by regulations under section 37,

provided that where the applicant is already the holder of a Part II licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any information, statement or other document provided by the applicant in connection with a previous application has changed.

(4) Upon receipt of an application for a Part II licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be the holder of a supervised role in respect of the applicant to provide such additional information, statements or other documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) –

- (a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information, statement or other document as the Commission may specify,

(b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement, document or report or anything in them.

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

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

(8) An application is deemed to be withdrawn if –

(a) the applicant has failed for –

(i) a period of three months, or

(ii) such longer period as the Commission may have specified by notice in writing to the applicant,

to provide any information, statement or other document required by the Commission for the purpose of determining the application,

(b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to

provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,

- (c) a period of 14 days has expired following the giving of that notice, and
- (d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) –
  - (i) that notice has not been withdrawn by the Commission, and
  - (ii) the information, statement or other document in question has not been provided.

(9) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a Part II licence.

(10) Before deciding whether or not to grant a Part II licence the

Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on business regulated by this Law in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(11) If at any time a licensee proposes to carry on business regulated by this Part of this Law in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (10).

**Grant or refusal of Part II licences.**

13. (1) The Commission may, upon receipt of an application for a Part II licence –

- (a) subject to the provisions of subsection (2), grant the application and issue a licence to the applicant, or
- (b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a Part II licence unless satisfied that the criteria specified in Schedule 4 (the "**minimum criteria for licensing**") are fulfilled –

- (a) in relation to the applicant, and
- (b) in relation to any person who is or is to be the holder of an approved supervised role or vetted supervised role in respect of the applicant.

(3) In considering whether or not to grant an application for a Part II licence, and without limitation, the Commission may take into account (so far as relevant) –

- (a) the provisions of any code of practice or guidance issued under section 68 of this Law or section 57 or 120 of the Enforcement Powers Law, and
- (b) any matter to which it may have regard under the provisions of section 28 or 29 of the Enforcement Powers Law when considering whether or not to suspend or revoke a Part II licence.

(4) The Commission may refuse an application for a Part II licence which is not accompanied by the appropriate fee prescribed by regulations under section 37 or which is otherwise not made in accordance with the provisions of this Law.

**Conditions of Part II licences.**

14. (1) The Commission may, by notice in writing, when granting a Part II licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensees generally, to any class or description of licensees, or to any particular licensee.

(3) The Commission may, by notice in writing, vary or rescind any condition in respect of a Part II licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a Part II licence may make provision as to the duration of the licence and for the protection of the customers and clients or potential customers and clients of the licensee; and without limitation such conditions may –

- (a) require the licensee 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 licensee from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons,
- (d) prohibit the licensee from entering into any other transaction or class or description of transactions,
- (e) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the licensee,
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensee,
- (g) require the furnishing to the Commission, at such

times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,

- (h) specify requirements as to the capitalisation and liquidity or margin of solvency of the business of the licensee,
- (i) require the licensee to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (j) prohibit, restrict or impose limitations on the carrying on of business regulated by this Law, or any class or description of such business, in or from within any place, or any particular place, outside the Bailiwick –
  - (i) by the licensee itself,
  - (ii) by any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or

association),

- (k) require the provision, in whatever form and manner and at whatever time the Commission may reasonably determine, of evidence of compliance with the provisions of this Law or the regulatory Laws.

(5) A licensee which contravenes any condition of a Part II licence is guilty of an offence.

(6) The contravention of a condition of a Part II licence is, whether or not constituting an offence under subsection (5), a ground for the suspension or revocation of the licence (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) A licensee whose Part II licence is subject to a condition as to its duration may apply under section 12 for a new Part II licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a Part II licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 13 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a Part II licence or (as the case may be) to suspend or revoke a Part II licence.

**Surrender of Part II licences.**

15. (1) A licensee may surrender its Part II licence by notice in writing served upon the Commission.

(2) A surrender takes effect, subject to the provisions of subsection (5), upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the licensee 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 Part II licence is, subject to the provisions of subsection (5), irrevocable unless it is expressed to take effect on a particular date and before that date the Commission, upon the written application of the licensee, by notice in writing to the licensee allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a Part II licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 49, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of a Part II licence is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of a Part II licence if –

- (a) in the opinion of the Commission, the liabilities of the licensee have not been discharged or transferred,
- (b) the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or
- (c) the name of the licensee would not, immediately after the surrender, comply with the requirements of section 49 of the Enforcement Powers Law.

(7) Upon the surrender of a Part II licence no fee paid or payable by the licensee concerned pursuant to regulations under section 37 shall be refunded, remitted, reduced or waived.

PART III  
REGULATION OF FINANCIAL FIRM BUSINESSES  
AND VIRTUAL ASSET SERVICE PROVIDERS

*Preliminary*

**Prohibition of unlicensed financial firm business.**

16. (1) Subject to the provisions of this Law, persons shall not carry on or hold themselves out as carrying on a business specified in Part A of Schedule 1 (a "**financial firm business**") in or from within the Bailiwick except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 23 (a "**Part III FFB licence**").

(2) Subject to the provisions of this Law, and without prejudice to

subsection (1), a Bailiwick body shall not carry on or hold itself out as carrying on a financial firm business in or from within any place whatsoever except under the authority of and in accordance with the conditions of a Part III FFB licence.

(3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.

**Prohibition of business of unlicensed virtual asset service providers ("VASPS").**

17. (1) Subject to the provisions of this Law, persons shall not provide or carry on, offer to provide or carry on or hold themselves out as being willing to provide or carry on, by way of business, in or from within the Bailiwick, any of the following services or activities in relation to virtual assets –

- (a) exchange between virtual assets and fiat currencies,
- (b) exchange between one or more forms of virtual asset,
- (c) transfer of virtual assets,
- (d) safe-keeping and/or administration of virtual assets or instruments enabling control over virtual assets,
- (e) participation in and provision of financial services relating to an issuer's offer and/or sale of a virtual asset (including, without limitation and by way of example, an initial coin offering), whether by the issuer of the asset or a service provider affiliated or unaffiliated with the issuer in respect of the issue, offer, sale, distribution, ongoing market circulation and trading of

the asset (including book-building, underwriting and market making),

- (f) any other service or activity or class or description thereof in respect of virtual assets specified for the purposes of this Law by regulations of the Committee,

except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 23 (a "**Part III VASP licence**").

(2) Subject to the provisions of this Law, and without prejudice to subsection (1), a Bailiwick body shall not provide or carry on, offer to provide or carry on or hold itself out as being willing to provide or carry on, by way of business, in or from within any place whatsoever, any of the services or activities in relation to virtual assets specified in subsection (1) except under the authority of and in accordance with the conditions of a Part III VASP licence.

(3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.

(4) In this section –

**"safe-keeping and/or administration"** includes providing or facilitating the control of virtual assets or governing their use (including, without limitation and by way of example, the holding and/or keeping of virtual assets by custodial wallet service providers),

**"virtual asset"** means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment

purposes, but virtual assets do not include digital representations of –

- (a) fiat currencies, or
- (b) general securities and derivatives within the meaning of category 2 in Schedule 1 to the Protection of Investors Law and other financial assets.

**Power to make regulations.**

18. The Committee may by regulation amend section 16 or 17 or Schedule 1.

**Provisions of this Part without prejudice to Part IV.**

19. The provisions of this Part are in addition to and not in derogation from the provisions of Part IV ("regulation of financial platforms and intermediation, etc").

*Exemptions, etc*

**Exempted financial firm business.**

20. (1) A financial firm business (the "**business in question**") is exempted from the operation of section 16 and accordingly is not subject to licensing under the provisions of this Law as a financial firm business where –

- (a) the total turnover in respect of financial firm business of the person carrying on the business in question does not exceed £50,000 per annum,
- (b) the business in question does not carry out occasional transactions, that is to say, any transaction involving

more than £10,000, carried out by the 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 business in question does not exceed 5% of the total turnover of the person carrying on the business,
- (d) the business in question is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) the business in question does not facilitate or transmit money or value by any means,
- (f) the main activity of the person carrying on the business in question is not that of a financial firm business, and
- (g) the business in question is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

(2) In addition, a financial firm business is not subject to licensing under the provisions of this Law as a financial firm business where –

- (a) it is carried on by a regulated business within the meaning of Part B of Schedule 1, or

(b) it constitutes incidental and other activities within the meaning of Part C of Schedule 1.

(3) In subsection (1)(b) "**business relationship**" means a continuing arrangement between the financial firm business in question and another party, to facilitate the carrying out of transactions in the course of such financial firm business.

(4) The Committee may by regulation amend this section.

**Further exemptions.**

21. (1) Without prejudice to the provisions of section 20, sections 16 and 17 do not apply in relation to persons, business, services or transactions of a class or description specified for the purposes of this Law by regulations of the Committee.

(2) Regulations under subsection (1) may –

(a) provide that any exemption is subject to such conditions, restrictions or requirements as may be specified in the regulations, and

(b) prescribe business, services or transactions (collectively referred to as "**services**") by reference to any factor appearing to the Committee to be appropriate and, without limitation, by reference to all or any of the following –

(i) the amount or value of the services in question,

- (ii) the total liability of the person to whom the services are provided to the provider of the services or other persons,
- (iii) the circumstances in which or the purposes for which the services are provided,
- (iv) the identity of the person to whom the services are provided, including that person's membership of a class whose membership is determined otherwise than by the Commission,
- (v) the number of, or the amount or value involved in, transactions of a particular class or description carried out by the provider of the services or the frequency with which that person carries out transactions of any particular class or description.

(3) Where circumstances change such that an exemption under this section in respect of –

- (a) a person, or
- (b) business, services or transactions provided or carried out by a person,

is no longer applicable, it is the duty of that person, within a period of 14 days immediately following the day on which that person becomes aware of the change, to

give notice in writing to the Commission of the change of circumstances.

### *Licensing*

#### **Applications for Part III licences.**

22. (1) A person wishing to obtain a Part III licence shall apply in that behalf to the Commission.

(2) The application shall state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on business regulated by this Law.

(3) An application for a Part III licence shall be made in such form and manner as the Commission may require and shall be accompanied by –

- (a) a statement of the applicant's proposed business,
- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application, and
- (c) the appropriate fee prescribed by regulations under section 37,

provided that where the applicant is already the holder of a Part III licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any information, statement or other document provided by the applicant in connection with a previous application has changed.

(4) Upon receipt of an application for a Part III licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be the holder of a supervised role in respect of the applicant to provide such additional information, statements or other documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) –

(a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information, statement or other document as the Commission may specify,

(b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to answer questions relating to any such information, statement, document or report or anything in them.

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

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

- (8) An application is deemed to be withdrawn if –
- (a) the applicant has failed for –
    - (i) a period of three months, or
    - (ii) such longer period as the Commission may have specified by notice in writing to the applicant,  
  
to provide any information, statement or other document required by the Commission for the purpose of determining the application,
  - (b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this subsection,
  - (c) a period of 14 days has expired following the giving of that notice, and
  - (d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) –

- (i) that notice has not been withdrawn by the Commission, and
- (ii) the information, statement or other document in question has not been provided.

(9) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a Part III licence.

(10) Before deciding whether or not to grant a Part III licence the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on business regulated by this Law in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(11) If at any time a licensee proposes to carry on business regulated by this Part of this Law in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (10).

**Grant or refusal of Part III licences.**

23. (1) The Commission may, upon receipt of an application for a Part III licence –

- (a) subject to the provisions of subsection (2), grant the application and issue a licence to the applicant, or
- (b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a Part III licence unless satisfied that the minimum criteria for licensing are fulfilled –

- (a) in relation to the applicant, and
- (b) in relation to any person who is or is to be the holder of an approved supervised role or vetted supervised role in respect of the applicant.

(3) In considering whether or not to grant an application for a Part III licence, and without limitation, the Commission may take into account (so far as relevant) –

- (a) the provisions of any code of practice or guidance issued under section 68 of this Law or section 57 or 120 of the Enforcement Powers Law, and
- (b) any matter to which it may have regard under the provisions of section 28 or 29 of the Enforcement

Powers Law when considering whether or not to suspend or revoke a Part III licence.

(4) The Commission may refuse an application for a Part III licence which is not accompanied by the appropriate fee prescribed by regulations under section 37 or which is otherwise not made in accordance with the provisions of this Law.

**Conditions of Part III licences.**

24. (1) The Commission may, by notice in writing, when granting a Part III licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensees generally, to any class or description of licensees, or to any particular licensee.

(3) The Commission may, by notice in writing, vary or rescind any condition in respect of a Part III licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a Part III licence may make provision as to the duration of the licence and for the protection of the customers and clients or potential customers and clients of the licensee; and without limitation such conditions may –

(a) require the licensee 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 licensee from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons,
- (d) prohibit the licensee from entering into any other transaction or class or description of transactions,
- (e) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the licensee,
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensee,
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be so specified,
- (h) specify requirements as to the capitalisation and liquidity or margin of solvency of the business of the licensee,
- (i) require the licensee to obtain professional indemnity

insurance in such amount and upon such terms and conditions as may be specified,

(j) prohibit, restrict or impose limitations on the carrying on of business regulated by this Law, or any class or description of such business, in or from within any place, or any particular place, outside the Bailiwick –

(i) by the licensee itself,

(ii) by any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or

(iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),

(k) require the provision, in whatever form and manner and at whatever time the Commission may reasonably determine, of evidence of compliance with the provisions of this Law or the regulatory Laws.

(5) A licensee which contravenes any condition of a Part III licence is guilty of an offence.

(6) The contravention of a condition of a Part III licence is, whether

or not constituting an offence under subsection (5), a ground for the suspension or revocation of the licence (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) A licensee whose Part III licence is subject to a condition as to its duration may apply under section 22 for a new Part III licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a Part III licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 23 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a Part III licence or (as the case may be) to suspend or revoke a Part III licence.

**Surrender of Part III licences.**

25. (1) A licensee may surrender its Part III licence by notice in writing served upon the Commission.

(2) A surrender takes effect, subject to the provisions of subsection (5), upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the licensee 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 Part III licence is, subject to the provisions of

subsection (5), irrevocable unless it is expressed to take effect on a particular date and before that date the Commission, upon the written application of the licensee, by notice in writing to the licensee allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a Part III licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 49, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of a Part III licence is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of a Part III licence if –

- (a) in the opinion of the Commission, the liabilities of the licensee have not been discharged or transferred,
- (b) the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre, or
- (c) the name of the licensee would not, immediately after the surrender, comply with the requirements of section 49 of the Enforcement Powers Law.

(7) Upon the surrender of a Part III licence no fee paid or payable

by the licensee concerned pursuant to regulations under section 37 shall be refunded, remitted, reduced or waived.

PART IV  
REGULATION OF FINANCIAL PLATFORMS  
AND INTERMEDIATION, ETC

*Preliminary*

**Prohibition of unlicensed financial platforms and intermediation, etc.**

26. (1) Subject to the provisions of this Law, persons shall not provide or carry on, offer to provide or carry on or hold themselves out as being willing to provide or carry on, by way of business, in or from within the Bailiwick, any of the following services or activities, whether by digital or other means –

- (a) the operation of a peer to peer platform,
- (b) the operation of a crowdfunding platform,
- (c) the provision of alternative non-bank credit or finance intermediation,
- (d) any other service or activity or class or description thereof specified for the purposes of this Law by regulations of the Committee,

except under the authority of and in accordance with the conditions of a licence granted by the Commission under section 34 (a "**Part IV licence**").

(2) Subject to the provisions of this Law, and without prejudice to subsection (1), a Bailiwick body shall not provide or carry on, offer to provide or carry on or hold itself out as being willing to provide or carry on, by way of business, in or from within any place whatsoever, any of the services or activities specified in subsection (1), except under the authority of and in accordance with the conditions of a Part IV licence.

(3) A person who contravenes any provision of subsection (1) or (2) is guilty of an offence.

(4) Business the carrying on of which is regulated by this Law by virtue of this section is referred to in this Law as "**platform and intermediation business**".

**Provisions of this Part without prejudice to Parts II and III.**

27. The provisions of this Part are in addition to and not in derogation from the provisions of Part II ("regulation of credit business") and Part III ("regulation of financial firm businesses and virtual asset service providers").

*Defined expressions*

**Meaning of "peer to peer platform".**

28. (1) In this Law a "**peer to peer platform**" means a platform, whether electronic or not (commonly referred to as a P2P platform) –

- (a) established as a marketplace to match persons who wish to borrow money with those who wish to undertake lending,

(b) through or by means of which –

(i) lenders (whether institutional, business or individual) notify their willingness to undertake lending, their identity and the terms on which they are willing to transact, and

(ii) potential borrowers are able to communicate with the lenders and enter into transactions.

(2) For the purposes of section 26(1)(a) (operation of a peer to peer platform) the person who is the operator of the platform shall be deemed to be the person providing, offering to provide or holding themselves out as being willing to provide the service or activity in question, unless in any particular case or class or description of case the Commission directs otherwise.

**Meaning of "crowdfunding platform".**

29. (1) In this Law a "**crowdfunding platform**" means a marketplace, whether electronic or not, through or by means of which persons seek to raise money or other finance through the issue of general securities and derivatives within the meaning of category 2 in Schedule 1 to the Protection of Investors Law.

(2) For the purposes of section 26(1)(b) (operation of a crowdfunding platform) the person who is the operator of the platform shall be deemed to be the person providing, offering to provide or holding themselves out as being willing to provide the service or activity in question, unless in any particular case or class or description of case the Commission directs otherwise.

**Meaning of "alternative non-bank credit or finance intermediation".**

30. (1) In this Law "**alternative non-bank credit or finance intermediation**" means intermediation or brokerage services, whether or not provided by electronic means, for the purposes of matching lenders with borrowers.

(2) For the purposes of section 26(1)(c) (provision of alternative non-bank credit or finance intermediation) the person who is the intermediary shall be deemed to be the person providing, offering to provide or holding themselves out as being willing to provide the service or activity in question, unless in any particular case or class or description of case the Commission directs otherwise.

**Power to make regulations.**

31. The Committee may by regulation amend the meaning of "**peer to peer platform**", "**crowdfunding platform**" and "**alternative non-bank credit or finance intermediation**".

*Exemptions, etc*

**Exemptions.**

32. (1) Section 26 does not apply in relation to persons, business, services or transactions of a class or description specified for the purposes of this Law by regulations of the Committee.

(2) Regulations under subsection (1) may –

(a) provide that any exemption is subject to such conditions, restrictions or requirements as may be specified in the regulations, and

(b) prescribe business, services or transactions (collectively referred to as "**services**") by reference to any factor appearing to the Committee to be appropriate and, without limitation, by reference to all or any of the following –

- (i) the amount or value of the services in question,
- (ii) the total liability of the person to whom the services are provided to the provider of the services or other persons,
- (iii) the circumstances in which or the purposes for which the services are provided,
- (iv) the identity of the person to whom the services are provided, including that person's membership of a class whose membership is determined otherwise than by the Commission,
- (v) the number of, or the amount or value involved in, transactions of a particular class or description carried out by the provider of the services or the frequency with which that person carries out transactions of any particular class or description.

(3) Where circumstances change such that an exemption under this section in respect of –

- (a) a person, or
- (b) business, services or transactions provided or carried out by a person,

is no longer applicable, it is the duty of that person, within a period of 14 days immediately following the day on which that person becomes aware of the change, to give notice in writing to the Commission of the change of circumstances.

### *Licensing*

#### **Applications for Part IV licences.**

33. (1) A person wishing to obtain a Part IV licence shall apply in that behalf to the Commission.

(2) The application shall state in or from within which, if any, of the islands of the Bailiwick the applicant proposes to carry on business regulated by this Law.

(3) An application for a Part IV licence shall be made in such form and manner as the Commission may require and shall be accompanied by –

- (a) a statement of the applicant's proposed business,
- (b) such other information or documents as the Commission may reasonably require for the purpose of determining the application, and

- (c) the appropriate fee prescribed by regulations under section 37,

provided that where the applicant is already the holder of a Part IV licence the Commission may in its absolute discretion waive the requirements of paragraph (a) and instead require the applicant to provide a statement setting out the extent to which any information, statement or other document provided by the applicant in connection with a previous application has changed.

(4) Upon receipt of an application for a Part IV licence and at any time thereafter the Commission may by notice in writing require the applicant or any person who is or is to be the holder of a supervised role in respect of the applicant to provide such additional information, statements or other documents as the Commission may reasonably require for the purpose of determining the application.

(5) Any information, statement or other document to be provided to the Commission under this section shall be in such form as the Commission may require; and the Commission may by notice in writing require the applicant or any person mentioned in subsection (4) –

- (a) to provide a report, in such form as may be specified in the notice, by an accountant or other qualified person, in either case nominated or approved by the Commission, on such aspects of that information, statement or other document as the Commission may specify,
- (b) to attend at such time and place as may be specified in the notice in order to give an explanation of and to

answer questions relating to any such information, statement, document or report or anything in them.

(6) The Commission's requirements under subsections (3), (4) and (5) may differ as between different applications.

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

(8) An application is deemed to be withdrawn if –

(a) the applicant has failed for –

(i) a period of three months, or

(ii) such longer period as the Commission may have specified by notice in writing to the applicant,

to provide any information, statement or other document required by the Commission for the purpose of determining the application,

(b) the Commission has, whether before or after the expiration of the period specified in paragraph (a), given written notice to the applicant that a failure to provide any information, statement or other document described in that paragraph will result in its application being deemed to be withdrawn under this

subsection,

- (c) a period of 14 days has expired following the giving of that notice, and
- (d) on the date of expiration of the periods specified in paragraphs (a) and (c) (whichever date is later) –
  - (i) that notice has not been withdrawn by the Commission, and
  - (ii) the information, statement or other document in question has not been provided.

(9) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a Part IV licence.

(10) Before deciding whether or not to grant a Part IV licence the Commission shall, if the application contains a statement under subsection (2) to the effect that the applicant proposes to carry on business regulated by this Law in or from within Alderney or Sark, consult the Policy and Finance Committee of the States of

Alderney or, as the case may be, the Policy and Finance Committee of the Chief Pleas of Sark.

(11) If at any time a licensee proposes to carry on business regulated by this Part of this Law in or from within Alderney or Sark, the Commission shall consult in the manner described in subsection (10).

**Grant or refusal of Part IV licences.**

34. (1) The Commission may, upon receipt of an application for a Part IV licence –

- (a) subject to the provisions of subsection (2), grant the application and issue a licence to the applicant, or
- (b) refuse the application.

(2) Without prejudice to the generality of its powers conferred by subsection (1)(b), the Commission shall not grant an application for a Part IV licence unless satisfied that the minimum criteria for licensing are fulfilled –

- (a) in relation to the applicant, and
- (b) in relation to any person who is or is to be the holder of an approved supervised role or vetted supervised role in respect of the applicant.

(3) In considering whether or not to grant an application for a Part IV licence, and without limitation, the Commission may take into account (so far as relevant) –

- (a) the provisions of any code of practice or guidance issued under section 68 of this Law or section 57 or 120 of the Enforcement Powers Law, and
- (b) any matter to which it may have regard under the provisions of section 28 or 29 of the Enforcement Powers Law when considering whether or not to suspend or revoke a Part IV licence.

(4) The Commission may refuse an application for a Part IV licence which is not accompanied by the appropriate fee prescribed by regulations under section 37 or which is otherwise not made in accordance with the provisions of this Law.

**Conditions of Part IV licences.**

35. (1) The Commission may, by notice in writing, when granting a Part IV licence or at any time thereafter, impose such conditions in respect of the licence as it thinks fit.

(2) Such conditions may apply to licensees generally, to any class or description of licensees, or to any particular licensee.

(3) The Commission may, by notice in writing, vary or rescind any condition in respect of a Part IV licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a Part IV licence may make provision as to the duration of the licence and for the protection of the customers and clients or

potential customers and clients of the licensee; and without limitation such conditions may –

- (a) require the licensee 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 licensee from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons,
- (d) prohibit the licensee from entering into any other transaction or class or description of transactions,
- (e) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the licensee,
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensee,
- (g) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and containing such information and particulars, as may be

so specified,

- (h) specify requirements as to the capitalisation and liquidity or margin of solvency of the business of the licensee,
- (i) require the licensee to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (j) prohibit, restrict or impose limitations on the carrying on of business regulated by this Law, or any class or description of such business, in or from within any place, or any particular place, outside the Bailiwick –
  - (i) by the licensee itself,
  - (ii) by any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
  - (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (k) require the provision, in whatever form and manner and at whatever time the Commission may reasonably

determine, of evidence of compliance with the provisions of this Law or the regulatory Laws.

(5) A licensee which contravenes any condition of a Part IV licence is guilty of an offence.

(6) The contravention of a condition of a Part IV licence is, whether or not constituting an offence under subsection (5), a ground for the suspension or revocation of the licence (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(7) A licensee whose Part IV licence is subject to a condition as to its duration may apply under section 33 for a new Part IV licence and, if that licence is granted, the first-mentioned licence shall cease to have effect.

(8) In considering whether or not to impose, vary or rescind any condition in respect of a Part IV licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 34 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for a Part IV licence or (as the case may be) to suspend or revoke a Part IV licence.

**Surrender of Part IV licences.**

36. (1) A licensee may surrender its Part IV licence by notice in writing served upon the Commission.

(2) A surrender takes effect, subject to the provisions of subsection

(5), upon service of the notice or such later date as may be specified therein; and where a later date is so specified, the licensee 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 Part IV licence is, subject to the provisions of subsection (5), irrevocable unless it is expressed to take effect on a particular date and before that date the Commission, upon the written application of the licensee, by notice in writing to the licensee allows the surrender to be withdrawn.

(4) The Commission may, on receipt of an application under subsection (3), decide not to allow the surrender of a Part IV licence to be withdrawn; but, where the Commission so decides, without prejudice to the powers of the Commission conferred otherwise than by this section, the surrender does not have effect before the end of the period within which, under section 49, an appeal can be brought or, if an appeal is brought within that period, before the appeal is determined.

(5) A surrender of a Part IV licence is not effective unless prior written consent to the surrender has been obtained from the Commission.

(6) The Commission may refuse its consent to the surrender of a Part IV licence if –

- (a) in the opinion of the Commission, the liabilities of the licensee have not been discharged or transferred,
- (b) the Commission believes that the surrender would not be in the interests of the public or the reputation of the

Bailiwick as a finance centre, or

- (c) the name of the licensee would not, immediately after the surrender, comply with the requirements of section 49 of the Enforcement Powers Law.

(7) Upon the surrender of a Part IV licence no fee paid or payable by the licensee concerned pursuant to regulations under section 37 shall be refunded, remitted, reduced or waived.

## PART V

### GENERAL REGULATORY PROVISIONS

#### *Fees*

#### **Fees regulations and recovery of fees.**

37. (1) The Committee may by regulation prescribe fees to be payable to the Commission in connection with –

- (a) any of the matters specified in subsection (2), and
- (b) such other matters as the Committee may by regulation prescribe for the purposes of this Law.

(2) The matters referred to in subsection (1)(a) are –

- (a) applications for or in respect of, and the grant, renewal or variation of, licences,

- (b) the deposit with or giving to the Commission of any return, accounts, report or other document, information or notification under the provisions of or for the purposes of this Law,
- (c) an application, other than one mentioned in paragraph (a), request or notification to the Commission under the provisions of or for the purposes of this Law,
- (d) any other matters in respect of licensees or licences.

(3) Regulations under this section may also make such provision as the Committee thinks fit in respect of the charging of interest in the event of default in the due payment of fees, charges, penalties and other amounts required to be paid to the Commission by or under the provisions of this Law.

(4) Regulations under this section may, without limitation –

- (a) prescribe fees to be payable to the Commission annually or periodically,
- (b) specify the dates, times, intervals, occasions, circumstances or events on, at, in or within which the payment of fees or interest is to be made,
- (c) provide for the determination or calculation of any fee or interest –
  - (i) in accordance with or by reference to a scale or

other factors prescribed by the regulations, or

(ii) on such other basis as may be so prescribed,

(d) make provision for the payment of fees and interest by instalments of such number and amounts and at such times as the regulations may specify or as the Commission may determine, and

(e) make provision for the variation, on the application of the payer or of the Commission's own motion, of –

(i) the amount of any interest, or

(ii) the number, amounts and times of the instalments by which any fee or interest is to be paid.

(5) Fees and interest payable pursuant to regulations under this section –

(a) are recoverable from –

(i) the person making the application, request or deposit concerned or giving the notification or information concerned,

(ii) the licensee by or in respect of whom, or in respect of whose licence or business, the fee or

interest is payable, or

- (iii) such other person or entity, or class or description of person or entity, as may be specified by the regulations,

as a civil debt due to the Commission,

- (b) may not (except to the extent that express provision to the contrary is made by or under the regulations or otherwise by or under the provisions of this Law) be refunded, remitted, reduced or waived,

- (c) shall, where appropriate, be proportioned in such manner as may be prescribed by the regulations.

(6) Without prejudice to the provisions of section 84(5), regulations under this section may make different provision in respect of –

- (a) different categories, classes or descriptions of licence or licensee or different categories, classes or descriptions of business regulated by this Law, or

- (b) the same categories, classes or descriptions of licence or licensee or the same category, class or description of business regulated by this Law, for different purposes or in respect of different circumstances.

(7) The provisions of this section are in addition to and not in

derogation from any other provision of this Law or the provisions of the regulatory Laws in respect of the payment of fees, interest and penalties.

*Principles of conduct*

**Principles of conduct for licensees.**

38. (1) A licensee must deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning it or its business, or the business in relation to which it is acting as licensee, which ought reasonably to be disclosed to the Commission.

(2) Without limitation, the Commission may have regard to the duty imposed by this section in performing any of its functions.

*Directions*

**Power to issue directions.**

39. (1) The Commission may, at any time, by notice in writing, give such directions to any person referred to in subsection (2) (the "**directed person**"), requiring the directed person to do or not to do any thing, as appear to the Commission to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, whether for the purpose of safeguarding assets or otherwise.

(2) A direction under this section may be given to –

(a) a licensee,

(b) subject to the provisions of subsections (5) and (8), a

former licensee,

- (c) a person carrying on business regulated by this Law –
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of such business,

- (d) a person who is the holder of a supervised role in respect of, or is an officer or employee of –
  - (i) a licensee, or
  - (ii) a person described in paragraph (c),
- (e) a person who has or is reasonably suspected of having contravened any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any of the provisions of this Law or the regulatory Laws,
- (f) an ancillary vehicle of a person or entity specified in

any other paragraph of this subsection, or

- (g) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(3) The Commission may vary or rescind a direction by notice in writing served on the directed person.

(4) Without prejudice to the generality of subsection (1), a direction may –

- (a) require the directed person 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) prohibit or impose limitations on the carrying on of business regulated by this Law and other business and on the acceptance or repayment of monies,
- (c) prohibit, restrict or impose limitations on the carrying on of business regulated by this Law, or any class or description of such business, in or from within any place, or any particular place, outside the Bailiwick –
  - (i) by the directed person,
  - (ii) by any undertaking established by the directed

person (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or

- (iii) through or by means of a relationship with any person (including, without limitation, a relationship of partnership, affiliation or association),
- (d) prohibit the directed person from soliciting (whether at all or in any specified manner) business regulated by this Law and any other business, either generally or from specified persons or classes or descriptions of persons,
- (e) prohibit the directed person from entering into any other transaction or class or description of transactions,
- (f) require the removal of any person who is the holder of a supervised role in respect of, or who is an officer, employee or auditor of, the directed person,
- (g) specify requirements to be fulfilled otherwise than by action taken by the directed person,
- (h) require the furnishing to the Commission, at such times, intervals and places as may be specified by the Commission, of such information and documents, and of accounts of such description, in such form and

manner and containing such information and particulars, as may be so specified,

(i) require the directed person to maintain in the Bailiwick, or to transfer to and keep in the custody of a trustee, custodian, licensed fiduciary, licensed banking institution or person of such other class or description as may be specified in the direction, assets of such value and description as may be so specified; and any such direction may provide that –

(i) assets kept in the custody of a trustee, custodian, licensed fiduciary, licensed banking institution or other person pursuant to the direction shall not, so long as the direction is in force, be removed from such custody or be made the subject of any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993<sup>d</sup>), trust, assignment, lien, right of set-off or other dealing except with the prior written consent of the Commission,

(ii) any charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey)

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<sup>d</sup> Order in Council No. III of 1993.

Law, 1993), trust, assignment, lien, right of set-off or other dealing purportedly created, executed or entered into by the directed person in contravention of the direction shall be ineffective against any claim by any liquidator of that person,

and a direction imposed by virtue of this paragraph shall be effective in law against or (as the case may require) for the benefit of third parties notwithstanding any rule of law to the contrary,

Provided that the rights of third parties –

- (A) who have taken or entered into a charge, mortgage, hypothèque, secured interest (including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993), trust, assignment, lien, right of set-off or other dealing described in subparagraph (ii), and
- (B) who in doing so have acted in good faith and for value and without notice of the direction,

are to be determined without regard to this paragraph,

(j) where the directed person is a licensee, and without prejudice to paragraph (i), require the directed person to take all necessary steps to transfer to a trustee, custodian, licensed fiduciary, licensed banking institution or person of any other class or description, in each case approved by the Commission, all assets, or all assets of any specified class or description, which –

(i) belong to the directed person, or

(ii) are held by or to the order of the directed person and either belong to customers or clients or belong to –

(A) an investment company the shares in which belong to customers or clients, or

(B) some other company, legal person or entity which is, or the assets of which are, wholly beneficially owned by customers or clients,

(k) require the directed person to provide evidence of –

(i) compliance with –

(A) any provision of this Law and the regulatory Laws, or

(B) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision, and

(ii) fulfilment of any of the applicable minimum criteria for licensing (whether in relation to the directed person or any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, the directed person),

in whatever form and manner and at whatever time the Commission may reasonably determine,

(l) where a notice of revocation or proposed revocation of licence has been issued to the directed person under the provisions of the Enforcement Powers Law, require the directed person to take all reasonable steps to procure the transfer of all or any of the directed person's customers and clients to another licensee acceptable to the Commission,

(m) require the directed person to prepare consolidated accounts (in addition to any accounts required to be prepared by virtue of the provisions of this Law),

(n) require the directed person to appoint a compliance

officer,

- (o) require the directed person to deposit with the Commission, and to comply with, a recovery plan acceptable to the Commission,
- (p) require the directed person to obtain professional indemnity insurance in such amount and upon such terms and conditions as may be specified,
- (q) contain such ancillary, incidental and supplementary provision as the Commission may determine.

(5) A direction may be imposed on a former licensee only within a period of six years immediately following the date on which the former licensee ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, a direction imposed on a former licensee within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

(6) A direction may be imposed on a person or entity which has at any time been a directed person of a class or description specified in subsection (2) in all respects as if they were a person or entity which is currently a directed person of that class or description, but only for a period of six years immediately following the date on which that person or entity ceased to be a directed person of that class or description, unless in any particular case the Commission directs otherwise with the

prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, a direction imposed on a person or entity which has at any time been a directed person of a class or description specified in subsection (2) within that six year period may, in accordance with subsection (7), remain in force after the expiration of that period.

This subsection does not apply to a former licensee.

(7) A direction shall remain in force until rescinded by the Commission, unless it is expressed to be of limited duration in which case it shall remain in force until –

- (a) the occurrence of such date, time, event or circumstance as may be specified in it,
- (b) such prohibitions, restrictions or requirements as may be so specified are complied with, or
- (c) rescinded by the Commission, if earlier.

For the avoidance of doubt, a direction imposed on a licensee or other person or entity of a class or description referred to in subsection (2) may remain in force after –

- (i) the date of revocation, suspension, expiration or surrender of the licence, or, as the case may be,

- (ii) the date on which that person or entity ceases to be a person or entity of that class or description.

(8) A person who contravenes any provision of a direction under this section is guilty of an offence.

(9) Where the directed person is a licensee, the contravention of a direction under this section –

- (a) is, whether or not constituting an offence under subsection (8), a ground for the suspension or revocation of the licence held by the directed person (see sections 28 and 29 of the Enforcement Powers Law), but
- (b) does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(10) In the event of failure by the directed person to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the directed person to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(11) In considering whether or not to impose, vary or rescind any direction the Commission may, without limitation, have regard (so far as relevant) to any matter to which it may have regard under the provisions of section 13, 23 or 34 of this Law or section 28 or 29 of the Enforcement Powers Law when considering whether or not to grant an application for, or (as the case may be) to suspend or revoke, a licence.

(12) The Commission may publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the reputation of the Bailiwick as a finance centre.

The publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

(13) In this section the "**appropriate Court**" means –

- (a) the Court of Alderney, where the directed person is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the directed person is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

*Power to exempt*

**Disapplication by Commission of licence requirement.**

40. (1) The Commission may, of its own motion or on the application of any person, by instrument in writing exempt any person or, after consultation with the Committee, any class or description of person from the requirement to hold a licence in respect of the carrying on of business regulated by this Law or any class or description thereof.

(2) An exemption under subsection (1) may relate to –

- (a) any business regulated by this Law or any class or description thereof, or
- (b) any particular service, transaction or activity or any class or description thereof.

(3) In determining whether or not to grant an exemption under subsection (1) in any particular case or class or description of case and, if so, the conditions thereof, the Commission may, without limitation, take into account –

- (a) the seriousness of the risks of money laundering and financing of terrorism,
- (b) whether the obligations imposed on licensees by the provisions of this Law or any other enactment would be unduly burdensome for persons who would be the subject of the exemption having regard to the benefit which a licence would confer on customers and clients,

- (c) whether the granting of the exemption would be detrimental to –
    - (i) the interests of the public or the reputation of the Bailiwick as a finance centre, or
    - (ii) the purposes of the performance of the Commission's functions, and
  - (d) any other matter the Commission considers relevant.
- (4) An application for an exemption under subsection (1) –
- (a) shall be made in such form and manner, and shall be accompanied by such information and documents, as the Commission may require,
  - (b) shall be accompanied by such fee as may be prescribed by regulations under section 37, and
  - (c) may be refused or granted subject to such conditions as the Commission may consider necessary or expedient.
- (5) An exemption under subsection (1) –
- (a) may be revoked or varied at any time by the Commission by written notice to the grantee (and any such variation may include the attachment of such

conditions, or the removal or modification of such conditions previously attached, as the Commission may think fit), and

(b) shall, subject to the provisions of paragraph (a), be valid for such period (if any) as the Commission may determine.

(6) If, whether before or after the grant of an exemption under subsection (1), there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant or (as the case may be) the grantee for the purposes of the application or exemption (whether by virtue of the information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant or (as the case may be) the grantee shall inform the Commission of the change, as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine).

(7) A failure to comply with any requirement arising by virtue of subsection (6) is, without limitation and without prejudice to any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of the exemption.

(8) The Commission may, whether before or after the grant of an exemption under subsection (1), require the applicant or grantee to furnish such additional information and documents as it considers necessary or desirable.

(9) A person who contravenes any condition of an exemption under subsection (1) is guilty of an offence.

(10) The contravention by any person of a condition of an exemption under subsection (1) is, whether or not constituting an offence under subsection (9), a ground for the suspension or revocation of any licence held by that person (see sections 28 and 29 of the Enforcement Powers Law) but does not of itself invalidate any contract entered into or transaction completed before the date of suspension or revocation.

(11) In this section –

"**applicant**" means a person who has applied for an exemption under subsection (1), and

"**grantee**" means a person to or in respect of whom such an exemption has been granted.

#### *Supervised roles*

#### **Supervised roles.**

41. (1) A person who, in relation to a body, is appointed as or otherwise becomes –

(a) a controller,

(b) a director,

(c) a partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership),

- (d) a money laundering reporting officer,
- (e) a money laundering compliance officer, or
- (f) a compliance officer,

shall be deemed for the purposes of this Law to be the holder of an "**approved supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 43.

(2) A person who, in relation to a body, is appointed as or otherwise becomes the holder of any such position, interest or role as the Committee may specify by regulation as being a vetted supervised role for the purposes of this Law shall be deemed for those purposes to be the holder of a "**vetted supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be subject to the provisions of section 44.

(3) A person who, in relation to a body, is appointed as or otherwise becomes –

- (a) a significant shareholder,
- (b) a person who, under the immediate authority of a director or chief executive, is responsible for maintaining the accounts or other records of the body,
- (c) the holder of any other role in order to enable the body to fulfil the requirements of paragraph 3 of Schedule 4

(business to be directed by at least two individuals),

- (d) an "**other supervised manager**", that is to say, a person appointed otherwise than as a chief executive, to exercise, under the immediate authority of a director or partner (or general partner, in the case of a limited partnership, or member, in the case of a limited liability partnership), day-to-day managerial functions in relation to business regulated by this Law in respect of which the body is or will be licensed (but not including a person who falls into any other category of supervised role set out in subsection (1) or (2) or in any other paragraph of this subsection),

shall be deemed for the purposes of this Law to be the holder of a "**notified supervised role**" in respect of that body, and the appointment to or acquisition of the role shall be notified to the Commission in accordance with the provisions of section 45.

(4) The Committee may by regulation amend this section so as to add to, remove or vary the positions, interests or roles included in each category of supervised role set out in subsections (1), (2) and (3).

(5) For the avoidance of doubt, the fact that a person is the holder of a supervised role does not of itself establish that that person is a shadow director within the meaning of –

- (a) section 132 of the Companies (Guernsey) Law, 2008<sup>e</sup>

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<sup>e</sup> Order in Council No. VIII of 2008; this enactment has been amended.

(the "**Companies (G) Law**") or

- (b) section 163(1) of the Companies (Alderney) Law, 1994<sup>f</sup>  
(the "**Companies (A) Law**").

*Information as to licensees*

**List of, and information as to, licensees.**

42. (1) The Commission shall establish and maintain, in such form as the Commission may determine, and cause to be published, in such manner as it thinks fit (including, without limitation, on its official website), a list of all persons holding licences ("**the list**").

(2) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list.

(3) The list shall contain, in relation to each licensee –

- (a) the name of the licensee,
- (b) the addresses or principal places of business of the licensee in the Bailiwick,
- (c) details of the class or description of business regulated by this Law being carried on,

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<sup>f</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

- (d) if the Commission determines that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre or for the purpose of the performance of its functions, details of –
  - (i) any conditions imposed in respect of the licence,
  - (ii) any directions given to the licensee, or
  - (iii) any enforcement requirements imposed on the licensee or any other person in connection with the licence, and
- (e) such other particulars as the Commission may determine.

(4) The Commission shall publish the fact that a particular person has ceased to hold a licence, whether by virtue of the revocation, surrender or expiry of the licence or otherwise, or has had its licence suspended.

(5) The Commission may also publish the fact that a particular person has been granted or refused a licence or that a particular person does not hold or has not held a licence.

- (6) If at any time it appears to the Commission –
  - (a) whether in consequence of –

- (i) any grant, suspension, revocation, surrender or expiry of a licence, or
  - (ii) any change in relation to a licensee, or
- (b) due to an error or for any other reason,

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

(7) The list and any publication under this section may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

*Notification of holding of approved and vetted supervised roles, etc*

**Notification of and objection to holders of approved supervised roles.**

43. (1) A person ("A") shall not become the holder of an approved supervised role in respect of a licensee of a class or description prescribed for the purposes of this section by rules of the Commission unless –

- (a) A or the licensee has notified the Commission in writing of the intention that A should become the holder of such a role, and
- (b) the Commission has notified A or the licensee in writing that there is no objection to A becoming the holder of such a role.

(2) A notification under subsection (1) shall be given in such form and manner as the Commission may require and shall be accompanied by –

- (a) such information and documents as the Commission may require for the purpose of deciding whether or not to serve a notice of objection, and
- (b) such fee as may be prescribed by regulations under section 37,

and following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require that person to furnish such additional information or documents as the Commission may require for the purpose referred to in paragraph (a).

(3) The Commission may serve a notice of objection under this section if it is not satisfied –

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of an approved supervised role of the description in question in respect of the licensee,
- (b) that the interests of customers or clients or potential customers or clients of the licensee would not in any other manner be threatened by that person becoming the holder of an approved supervised role of that

description, or

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee as the holder of an approved supervised role of the description in question –

(i) the minimum criteria for licensing would continue to be fulfilled –

(A) in relation to that licensee, or

(B) in relation to any person who is or is to be the holder of a supervised role in respect of or employee of that licensee,  
or

(ii) if any of those criteria were not so fulfilled, that that person would be likely to undertake remedial action.

(4) A notice of objection under this section shall (without prejudice to the provisions of section 47) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

(5) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensee or class, description or category of person or licensee from the application of all or any of the requirements of subsection (1), either generally or in any particular case or class of case, and whether

before or after the event in question.

**Notification of and objection to holders of vetted supervised roles.**

44. (1) A person ("B") shall not become the holder of a vetted supervised role in respect of a licensee of a class or description prescribed for the purposes of this section by rules of the Commission unless –

- (a) B or the licensee has notified the Commission in writing of the intention that B should become the holder of such a role, and
- (b) the Commission has notified B or the licensee in writing that there is no objection to B becoming the holder of such a role,

and, for the purposes of this subsection, the Commission's written notification that there is no objection to a person becoming the holder of such a role shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of compliance by that person or the licensee with the requirements of this subsection and any other requirements imposed under subsection (2) (or such longer period as the Commission may, before the expiration of that period, determine) unless, before the expiration of that period, the Commission serves notice of objection under this section on that person or the licensee.

(2) A notification under subsection (1) shall be given in such form and manner as the Commission may require and shall be accompanied by –

- (a) such information and documents as the Commission may require for the purpose of deciding whether or not

to serve a notice of objection, and

- (b) such fee as may be prescribed by regulations under section 37,

and, following receipt of notification under subsection (1) from any person, the Commission may by notice in writing require that person to furnish such additional information or documents as the Commission may require for the purpose referred to in paragraph (a).

(3) The Commission may serve a notice of objection under this section if it is not satisfied –

- (a) that (having regard to the applicable minimum criteria for licensing) the person concerned is a fit and proper person to become the holder of a vetted supervised role of the description in question in respect of the licensee,
- (b) that the interests of customers or clients or potential customers or clients of the licensee would not in any other manner be threatened by that person becoming the holder of a vetted supervised role of that description, or
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensee as the holder of a vetted supervised role of the description in question –

(i) the minimum criteria for licensing would continue to be fulfilled –

(A) in relation to that licensee, and

(B) in relation to any person who is or is to be the holder of a supervised role in respect of or employee of that licensee, or

(ii) if any of those criteria were not so fulfilled, that that person would be likely to undertake remedial action.

(4) A notice of objection under this section shall (without prejudice to the provisions of section 47) specify the matter mentioned in subsection (3) as to which the Commission is not satisfied.

(5) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any person or licensee or class, description or category of person or licensee from the application of all or any of the requirements of subsection (1), either generally or in any particular case or class of case, and whether before or after the event in question.

**Notification of change of holder of supervised role.**

45. (1) Subject to the provisions of subsection (4), where any person becomes or ceases to be the holder of a supervised role in respect of a licensee of a class or description prescribed for the purposes of this section by rules of the Commission, the licensee shall give notice in writing to the Commission of the fact.

(2) Subject as aforesaid, a notice required to be given under subsection (1) shall be given within a period of 14 days immediately following the day on which the person in question became or (as the case may be) ceased to be the holder of a supervised role.

(3) A notice required to be given under subsection (1) shall be given in such form and manner as the Commission may require and shall be accompanied by –

(a) such information and documents as the Commission may require, and

(b) such fee as may be prescribed by regulations under section 37,

and, following receipt of such notice from a licensee, the Commission may by notice in writing require the licensee to furnish such additional information or documents as the Commission may require.

(4) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee or class, description or category of licensee from the application of all or any of the requirements of subsection (1), (2) or (3), either generally or in any particular case or class of case, and whether before or after the event in question.

(5) A licensee ("A") who fails to give notice in accordance with this section is guilty of an offence unless A shows (for the avoidance of doubt, on a balance of probabilities) that A was not aware that the facts or circumstances were such as to

require the giving of such notice; but in such a case A is guilty of the offence if A fails to give such notice within a period of 14 days immediately following the day on which A became or ought reasonably to have become so aware.

PART VI  
APPEALS, OBTAINING OF DOCUMENTS, ACCOUNTS  
AND OTHER SUPERVISORY REQUIREMENTS

*Representations, notice of decisions  
and appeals*

**Representations concerning proposed decisions of Commission.**

46. (1) Before the Commission makes a decision in respect of which a right of appeal is conferred by section 49, other than a decision to serve a notice under sections 44 or 53, the procedure prescribed in this section shall be followed.

(2) The Commission shall serve on the person by whom, in the opinion of the Commission, the right of appeal would be exercisable if the Commission were to make the proposed decision (the "**person concerned**") a notice in writing –

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of and the grounds for the proposed decision,
- (c) setting out particulars of or accompanied by –

- (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement proposed to be imposed, renewed, varied or rescinded, or
    - (ii) any notice proposed to be served,
  - (d) stating that the person concerned (and, where appropriate, the person upon whom a copy of the notice is served under subsection (3)) may, within a period of 28 days (or such longer period as the Commission may specify in the notice or subsequently allow) beginning on the date of the notice, make written and/or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine,
  - (e) containing or accompanied by, in accordance with the provisions of section 48(1), a statement of the reasons for the proposed decision (but subject to the provisions of section 48(2)), and
  - (f) giving particulars of the right of appeal which would be exercisable under section 49 if the Commission were to make the proposed decision.
- (3) Where –
- (a) a ground for the proposed decision is that any of the

minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

- (b) any proposed order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal which would be exercisable under section 49 if the Commission were to make the proposed decision.

(4) The Commission shall consider any representations made in response to a notice served under this section before giving further consideration to the proposed decision.

(5) The Commission may also, in performing its functions under the provisions of this Law or the regulatory Laws, and without limitation, have regard to –

- (a) any representations made in response to a notice served under this section, or
- (b) any failure or omission to make any such representations.

(6) The period of 28 days mentioned in subsection (2)(d) may be

reduced in any case in which the Commission considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authority of not less than two ordinary members of the Commission, the procedure prescribed in this section may be dispensed with altogether.

**Notice of decisions of Commission.**

47. (1) Where the Commission (having taken into account, where appropriate, any representations made by the person concerned) makes a decision in respect of which a right of appeal is conferred by section 49, notice in writing of the decision –

- (a) shall be served by the Commission on the person concerned,
- (b) shall state the terms of and the grounds for the decision,
- (c) shall set out particulars of or be accompanied by –
  - (i) any order, restriction, condition, obligation, requirement, duty, direction or arrangement imposed, renewed, varied or rescinded, or
  - (ii) any notice to be served,
- (d) shall contain or be accompanied by, in accordance with the provisions of section 48(1), a statement of the

reasons for the decision (but subject to the provisions of section 48(2)), and

- (e) shall give particulars of the right of appeal conferred by section 49,

and "**the person concerned**" means the person by whom, in the opinion of the Commission, the right of appeal is exercisable.

(2) Where –

- (a) a ground for a decision notice of which is required to be served under subsection (1) is that any of the minimum criteria for licensing are not or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) an order, restriction, condition, obligation, requirement, duty, direction or arrangement requires the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (1) (which copy may omit any matter which does not relate to that person) together with particulars of the right of appeal conferred by section 49.

**Disclosure of reasons for decisions of Commission.**

48. (1) When the Commission serves notice on a person –

- (a) under section 47(1) or (2) of a decision in respect of which a right of appeal is conferred by section 49, or
- (b) under section 46(2) or (3) stating that the Commission is proposing to make such a decision,

the Commission shall, subject to the provisions of subsection (2), provide that person with a written statement of the reasons for the decision or proposed decision, as the case may be.

(2) Subsection (1) does not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to –

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities, whether in the Bailiwick or elsewhere, or
- (c) a third party (wherever situated).

(3) Where, pursuant to the provisions of subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person to whom the statement was provided of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 49.

**Appeals to Royal Court against decisions of Commission.**

49. (1) A person aggrieved by a decision of the Commission –
- (a) under section 13(1), 23(1) or 34(1), to refuse an application for a licence,
  - (b) under section 14, 24 or 35, to impose any condition in respect of a licence (whether at the time of its issue or subsequently) or to vary or rescind any condition so imposed,
  - (c) to refuse to vary or rescind any condition so imposed,
  - (d) under section 15, 25 or 36 –
    - (i) not to allow the surrender of a licence to be withdrawn, or
    - (ii) not to give consent to the surrender of a licence,
  - (e) under section 39(1) or 61(7), to give any direction or to vary or rescind any direction so given,
  - (f) to refuse to vary or rescind any direction so given,
  - (g) under section 54, to appoint or require the appointment of a skilled person,

- (h) under section 43 ("notification of and objection to holders of approved supervised roles"), to serve a notice of objection,
- (i) under section 44 ("notification of and objection to holders of vetted supervised roles"), to serve a notice of objection,
- (j) to omit, pursuant to the provisions of section 48(2), any matter from a statement of reasons provided pursuant to section 48(1),
- (k) under section 53 (power to require information and production of documents), to serve a notice under that section,
- (l) for the avoidance of doubt, to do any of the above things pursuant to the operation of section 11 or 64 of the Enforcement Powers Law, or
- (m) which is a decision of such class or description as the States may by Ordinance prescribe for the purposes of this section,

may appeal to the Royal Court against the decision.

(2) Where –

- (a) a ground for a decision described in subsection (1) is that any of the minimum criteria for licensing are not

or have not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or

- (b) the effect of a decision described in subsection (1) is to require the removal or replacement of any person as an officer, employee or auditor, or holder of a supervised role,

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

- (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 Royal 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 Royal Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007<sup>8</sup>.

- (6) On an appeal under this section the Royal Court may –
  - (a) set the decision of the Commission aside and, if the Royal Court considers it appropriate to do so, remit the

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<sup>8</sup> O.R.C. No. IV of 2007.

matter to the Commission with such directions as the Royal Court thinks fit, or

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

(7) On an appeal under this section against a decision of the Commission described in –

(a) subsection (1)(b),

(b) subsection (1)(d)(i),

(c) subsection (1)(e),

(d) subsection (1)(g), or

(e) subsection (1)(k),

the Royal Court may, upon the application of the appellant, and on such terms and conditions as the Royal Court thinks just, suspend or modify the operation of the decision in question pending the determination of the appeal.

This subsection is without prejudice to section 46(6).

(8) For the purposes of determining an appeal under this section against a decision of the Commission described in subsection (1)(j) to omit, pursuant to the provisions of section 48(2), any matter from a statement of reasons, the Royal Court may examine the information the disclosure of which the Commission considers would be prejudicial; and, unless the Royal Court orders otherwise, the

information shall not, pending the determination of the appeal or at any time thereafter, be disclosed to the appellant or any person representing the appellant.

**Appeals from Royal Court to Court of Appeal.**

50. (1) An appeal from a decision of the Royal Court made under the provisions of this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>h</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Restriction on successive challenges.**

51. (1) The Commission shall not (unless, in the opinion of the Commission, there are exceptional circumstances to justify doing so, the burden of proving which shall be on the applicant) proceed to consider an application by a person for the variation or revocation of an order or other decision to which this section applies where –

- (a) the application is a further application, that is to say, an application which relates to a person in respect of whom a previous application for the variation or revocation of that order or other decision has been received by the Commission,

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<sup>h</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

(b) in the opinion of the Commission, that further application discloses no significant change in any material circumstances concerning that person (the burden of proving that there has been such a significant change being on the applicant), and

(c) either –

(i) an appeal under section 49 relating to a previous such application in respect of that person has been commenced but not yet determined, or

(ii) within the period of 12 months immediately preceding receipt of that further application –

(A) a previous such application in respect of that person has been determined by the Commission, or

(B) an appeal under section 49 relating to a previous such application in respect of that person has been determined.

(2) The orders and other decisions to which this section applies

are –

(a) a decision under section 14, 24 or 35 to impose, vary or rescind any condition in respect of a licence,

- (b) a decision to refuse to vary or rescind any such condition,
- (c) a decision under section 39(1) or 61(7) to give any direction or to vary or rescind any direction so given,
- (d) a decision to refuse to vary or rescind any direction so given,
- (e) a decision to appoint or require the appointment of a skilled person under section 54,
- (f) a decision to serve notice of objection under section 43 (objection to holders of approved supervised role),
- (g) a decision to serve notice of objection under section 44 (objection to holders of vetted supervised role),
- (h) an order or other decision of a class or description specified by regulations of the Committee.

*Powers to obtain information  
and skilled persons, etc*

**Persons to whom section 53 applies.**

52. (1) In section 53 a "**relevant person**" means a person or entity of any of the following classes or descriptions –

- (a) a licensee,
- (b) an applicant for a licence,
- (c) a former licensee, but subject to the provisions of subsection (2),
- (d) a person carrying on any class or description of business regulated by this Law –
  - (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
  - (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,in respect of that class or description of business,
- (e) a person other than a person mentioned in paragraph (a), (b) or (d) carrying on any class or description of business regulated by this Law, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,
- (f) a person who is the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection,

(g) where a person ("A") who is a relevant person by virtue of paragraph (f) is itself a company or other legal person, any person who is the holder of a supervised role in respect of, or an officer of, A,

(h) an employee of, or a person who is or has at any time been directly or indirectly employed (whether or not under a contract of employment) by, a relevant person specified in any other paragraph of this subsection,

(i) any person or entity –

(i) which has or has at any time had any direct or indirect proprietary, financial, economic or other interest in or connection with a relevant person specified in any other paragraph of this subsection, or

(ii) in or with which a relevant person specified in any other paragraph of this subsection has or has at any time had any such interest or connection,

but subject to the provisions of subsection (5),

(j) an associated party of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),

- (k) a group entity of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (l) a special purpose vehicle or ancillary vehicle of a relevant person specified in any other paragraph of this subsection, but subject to the provisions of subsection (5),
- (m) a person who is a significant shareholder of a relevant person specified in any other paragraph of this subsection, where that relevant person is a company,
- (n) a company of which the holder of a supervised role in respect of a relevant person specified in any other paragraph of this subsection is a controller, but subject to the provisions of subsection (5),
- (o) a person who performs any function for or on behalf of –
  - (i) a relevant person specified in any other paragraph of this subsection, or
  - (ii) a person acting for or on behalf of a relevant person so specified,

in relation to business regulated by this Law,

including, without limitation, a person who is an auditor of a relevant person so specified, or

- (p) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(2) The provisions of section 53 apply in relation to a former licensee only for a period of six years immediately following the date on which that former licensee ceased to be licensed, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 53 are exercised in respect of a former licensee within that six year period, they may continue to be exercised in respect of that former licensee after the expiration of that period.

(3) The provisions of section 53 apply in relation to a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section as they apply in relation to a person or entity which is currently a relevant person of that class or description, but only –

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be a relevant person of that class or description, and
- (b) for a period of six years immediately following the date

on which that person or entity ceased to be or be deemed to be a relevant person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by section 53 are exercised in respect of a person or entity which has at any time been or been deemed to be a relevant person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

This subsection does not apply to a former licensee.

(4) For the avoidance of doubt, if the powers conferred by section 53 are exercised in respect of a licensee or other person or entity of a class or description of relevant person referred to in subsection (1), the powers may continue to be exercised in respect of them after –

- (a) the date of revocation, suspension, expiration or surrender of their licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be a relevant person of that class or description.

(5) The powers conferred by section 53 may be exercised in relation to a person or entity referred to in subsection (1)(i), an associated party referred to in subsection (1)(j), a group entity referred to in subsection (1)(k), a special purpose

vehicle or ancillary vehicle referred to in subsection (1)(l) or a company referred to in subsection (1)(n) only –

- (a) where it appears necessary or desirable to the Commission to do so –
  - (i) in the interests of the public or the reputation of the Bailiwick as a finance centre, or
  - (ii) for the purpose of the performance of its functions, and
- (b) with the prior written authority of not less than two ordinary members of the Commission.

**Power to require information and production of documents, etc.**

53. (1) The Commission may by notice in writing served on a relevant person within the meaning of section 52 require the relevant person to furnish the Commission or a person duly appointed by the Commission in that behalf (an "**appointed person**"), on any occasion or at times or intervals, and in respect of the periods, at the place, and in the form or manner, specified by the Commission or appointed person, with such information and documents, or information and documents of such class or description, as the Commission or (on producing, if required to do so, evidence of the appointed person's authority) the appointed person may reasonably require for the purpose of the performance of the Commission's functions, being, if the Commission or the appointed person so requires, information and documents verified in such manner as the Commission or appointed person may reasonably specify.

(2) It is hereby declared for the avoidance of doubt –

(a) that a requirement to furnish information or documents under subsection (1) may be imposed on, or in relation to, a particular relevant person, all relevant persons or any class or description of relevant persons,

(b) that a requirement as to the manner in which such information or documents are to be verified may direct their annexation to any accounts, and that they be reported upon by the auditor of those accounts in such manner as the Commission may specify.

(3) Where by virtue of subsection (1) the Commission or an appointed person has power to require the production of any information or documents from a relevant person, the Commission or that appointed person has the like power to require production of the information or documents from any person who appears to the Commission or that appointed person to be in possession of them.

(4) Any power conferred by or under the provisions of this section to require a person to produce any documents includes power –

(a) if the documents are produced –

(i) to take copies of them or extracts from them,  
and

(ii) to require –

(A) the person who was required to produce them, or

(B) any other person who is a present or past holder of a supervised role in respect of, or is or was at any time an employee of, or directly or indirectly employed (whether or not under a contract of employment) by, that person,

to provide an explanation of any of them,

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

(5) A person on whom a requirement is imposed by or under the provisions of this section shall, if so required by the Commission, provide a statement or declaration, in such form and manner as the Commission may require, that any information and documents furnished by that person pursuant to the requirement are to the best of that person's knowledge accurate, complete and correct, whether for the purpose of supporting the subsequent use of the information or documents in civil, criminal or administrative proceedings in the Bailiwick or elsewhere or for any other purpose.

(6) A statement made by a person ("B") in response to a

requirement imposed by or under this section –

- (a) may be used in evidence against B in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against B in criminal proceedings except –
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of B, or
  - (ii) in proceedings for –
    - (A) an offence under subsection (10) of this section or section 109(1) of the Enforcement Powers Law,
    - (B) some other offence where, in giving evidence, B makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
    - (C) perjury, or
    - (D) perverting the course of justice.

(7) A requirement imposed by or under the provisions of this section has 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, or by any other act or omission, pursuant to such a requirement.

(8) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(9) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to the lien.

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

**Appointment of skilled persons.**

54. (1) The Commission may, in relation to an inspected person within the meaning of subsection (4), if it considers it necessary or desirable to do so –

(a) in the interests of –

(i) the public, or

(ii) the reputation of the Bailiwick as a finance centre, or

(b) for the purpose of the performance of its functions,

appoint, or require the inspected person to appoint, one or more competent persons ("**skilled persons**") to investigate and report to the Commission on –

(i) the nature, conduct or state of the business of the inspected person or any particular aspect of that business, or

(ii) the ownership or control of the inspected person,

and the Commission shall give notice in writing of the appointment to the inspected person.

(2) A report of a skilled person under this section shall be in such form as may be specified in the notice of the appointment referred to in subsection (1) or as the Commission may otherwise determine.

(3) A person appointed as a skilled person –

(a) must, if appointed by the inspected person, be nominated or approved by the Commission,

(b) must appear to the Commission to have the qualifications, skill and resources necessary to enable the skilled person to conduct the investigation, and to make the report, in question, and

(c) may, for the avoidance of doubt, be an officer or servant of the Commission.

(4) In this section an "**inspected person**" means a person or entity of any of the following classes or descriptions –

(a) a licensee,

(b) a person other than a person mentioned in paragraph (a) carrying on any class or description of business regulated by this Law, but only where the prior written authority of not less than two ordinary members of the Commission has been obtained,

(c) a person who performs any function for or on behalf of –

(i) a licensee, or

(ii) a person acting for or on behalf of a licensee,

in relation to business regulated by this Law, including, without limitation, a person who is an auditor of a licensee, or

(d) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee.

(5) The provisions of this section apply in relation to a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section as they apply in relation to a person or entity which is currently an inspected person of that class or description, but only –

- (a) in connection with the business, ownership or control of that person or entity at a time when it was or was deemed to be an inspected person of that class or description, and
- (b) for a period of six years immediately following the date on which that person or entity ceased to be or be deemed to be an inspected person of that class or description, unless in any particular case the Commission directs otherwise with the prior written authority of not less than two ordinary members of the Commission.

However, for the avoidance of doubt, if the powers conferred by this section are exercised in respect of a person or entity which has at any time been or been deemed to be an inspected person of a class or description specified in this section within that six year period, they may continue to be exercised in respect of that person or entity after the expiration of that period.

(6) For the avoidance of doubt, if the powers conferred by this section are exercised in respect of a licensee or other person or entity of a class or description of inspected person referred to in subsection (4), the powers may continue to be exercised in respect of them after –

- (a) the date of revocation, suspension, expiration or surrender of their licence, or, as the case may be,
- (b) the date on which that person or entity ceased to be an inspected person of that class or description.

(7) An inspected person being investigated under this section and any person described in subsection (8) –

- (a) shall produce to a skilled person, at such time and place and in such form and manner as the skilled person may require, all documents in the custody or power of the inspected person or person so described and relating to the inspected person; and the skilled person may take copies of or extracts from any documents produced under this paragraph,
- (b) shall attend before a skilled person at such time and place as the skilled person may require and answer such questions and give such explanations as the skilled person may put to or require of the inspected person or person so described in relation to the inspected person, and
- (c) otherwise shall give a skilled person all assistance in connection with the investigation which the inspected person or person so described is reasonably able to give.

- (8) The persons referred to in subsection (7) are –
- (a) a person who is or has been the holder of a supervised role in respect of, or an employee, partner (or fellow member, in the case of a limited liability partnership), agent, banker, auditor, actuary, advocate or other legal adviser of, an inspected person being investigated under this section,
  - (b) a person appointed as a skilled person pursuant to the provisions of the regulatory Laws in respect of such an inspected person, and
  - (c) a person appointed to make a report under section 12(5)(a), 22(5)(a) or 33(5)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5)(a) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law in respect of such an inspected person.

(9) A skilled person shall, if so required, produce evidence of the skilled person's authority.

- (10) A person who without reasonable excuse –

- (a) contravenes any provision of subsection (7), or
- (b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to a skilled person exercising or purporting to exercise any power conferred by this section,

is guilty of an offence.

(11) A statement made by a person ("A") in response to a requirement imposed by or under this section –

- (a) may be used in evidence against A in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against A in criminal proceedings except –
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of A, or
  - (ii) in proceedings for –
    - (A) an offence under subsection (10) or section 109(1) of the Enforcement Powers Law (but only in relation to a requirement imposed by or under this section),

(B) some other offence where, in giving evidence, A makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(12) A requirement imposed by or under the provisions of this section has 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, or by any other act or omission, pursuant to such a requirement.

(13) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(14) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to the lien.

(15) Subject to the provisions of subsection (16), the costs, fees and

expenses of an investigation and report under this section shall be met by the inspected person 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 inspected person as a civil debt.

(16) Any sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) may be recovered by the Commission from an inspected person as a civil debt except where and to the extent that 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.

For the avoidance of doubt, the burden of establishing the matters referred to in paragraphs (a) and (b) lie on the person from whom recovery is sought.

(17) No liability is incurred by a skilled person in respect of anything done or omitted to be done after the commencement of this Law in connection with the preparation of a report under, or otherwise for the purposes of, this section except to the extent that the liability arises from the skilled person's own fraud, wilful misconduct or gross negligence.

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

55. A person ("B") upon whom a requirement is imposed by or under the provisions of section 53 or 54 or who knows or has reasonable grounds to suspect –

- (a) that such a requirement is likely to be imposed on B, or
- (b) that an inquiry or investigation is being or is likely to be carried out under the provisions of section 53 or 54,

and who removes, conceals, tampers with, falsifies, destroys or otherwise disposes of, or causes or permits to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of, documents which B knows or has reasonable grounds to suspect –

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

is guilty of an offence unless B proves (for the avoidance of doubt, on a balance of probabilities) that B had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from persons carrying out such an inquiry or investigation.

**Retention of documents.**

56. (1) The following persons or entities –

- (a) a licensee,
- (b) a person carrying on any class or description of business regulated by this Law –

- (i) who is exempted by the provisions of this Law from the requirement to be licensed hereunder, or
- (ii) otherwise in such circumstances specified in the provisions of this Law as not to require licensing hereunder,

in respect of that class or description of business regulated by this Law,

- (c) a person or entity or class or description of person or entity prescribed for the purposes of this section by regulations of the Committee,

must retain (and make arrangements for the retention, in the event of their dissolution, winding up, cessation or deregistration, of) all documents and information which they (or any person or entity acting on their behalf pursuant to any such arrangements) were required to make, keep or maintain by or under the provisions of this Law or any other enactment for a period of six years immediately following the date on which they ceased to be –

- (i) a licensee, or
- (ii) a person of any other class or description specified in any paragraph of this subsection,

as the case may be.

(2) The period of six years specified in subsection (1) may be extended by the Commission on any number of occasions for further periods each of which may not exceed three years by notice in writing served on the person in question within the six year period or, as the case may be, within the current period of extension.

(3) The provisions of this section are without prejudice to any other obligation imposed or arising by or under any enactment.

(4) The Commission may make or issue rules, guidance or policies for the purpose of carrying this section into effect.

(5) Rules, guidance or policies under subsection (4) may, without limitation, make provision in respect of –

- (a) the form in which documents and information are to be retained and made available,
- (b) the classes or descriptions of document or information to which this section does, or does not, apply,
- (c) the arrangements which a person or entity of a class or description specified in any paragraph of subsection (1) must make in respect of the retention of documents and information in the event of their dissolution, winding up, cessation or deregistration, and
- (d) the duties and obligations of persons who, pursuant to arrangements described in subsection (1), retain or

have possession or control of the documents and information of a person or entity of a class or description specified in any paragraph of subsection (1) which has been dissolved, wound up or deregistered or which has otherwise ceased.

(6) Rules under this section may provide that this section shall have effect in respect of any person or entity or class or description of person or entity subject to such exceptions, adaptations and modifications as may be specified in the rules.

*Accounts and auditors*

**Audited accounts to be available for inspection.**

57. (1) A licensee of a class or description specified by rules of the Commission shall make available for inspection by any person on request a copy (which may be in electronic form) of its most recent audited accounts including the auditors' report on the accounts.

(2) The Commission may (without prejudice to the provisions of section 64) make rules prescribing the form in which the accounts and reports described in subsection (1) are to be, the information and particulars to be contained in them and the times or intervals at which and periods in respect of which they are to be drawn up; and rules under this subsection may also make provision in respect of the delivery of such accounts and reports to such persons and at such times or intervals and at such places as may be prescribed.

(3) The Commission may in its absolute discretion, by notice in writing and subject to such conditions as it thinks fit, and either generally or in any

particular case or class of case, and whether before or after the event in question, exempt any licensee or class or description of licensee from the application of all or any of the requirements of subsection (1) and of any rules under subsection (2) and instead require the licensee to make available for inspection by any person on request an abridged version of the accounts or reports described in subsection (1) in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

- (4) A licensee which contravenes –
  - (a) any provision of this section or of any rules made under it, or
  - (b) any requirement imposed by or under any such provision,

is guilty of an offence, but only, in the case of rules, to the extent that the rules expressly so provide following consultation with Her Majesty's Procureur.

**Notification in respect of auditors.**

58. (1) A licensee of a class or description specified by rules of the Commission shall appoint auditors as auditors to the licensee; and whenever an appointment under this section comes to an end the licensee shall, as soon as is reasonably practicable and in any case within a period of 28 days after the day on which that appointment came to an end (or such longer period as the Commission may, in its absolute discretion, by written notice allow) make a fresh appointment of auditors as auditors to the licensee.

- (2) Without prejudice to the provisions of section 45, if an

appointment as auditor under this section comes to an end the licensee shall immediately give the Commission written notice and explanation of the fact, giving the name of the person whose appointment has come to an end.

(3) Without prejudice to the provisions of section 45, a licensee of a class or description specified by rules of the Commission which is a company shall immediately give written notice and explanation to the Commission –

- (a) if the licensee proposes to give special notice to its members of a resolution removing an auditor before the expiration of the auditor's term of office,
- (b) if the licensee gives notice to its members of a resolution replacing an auditor at the expiration of the auditor's term of office, or
- (c) if a person ceases to be an auditor of the licensee otherwise than pursuant to such a resolution.

(4) An auditor of a licensee of a class or description specified by rules of the Commission appointed for the purposes of or in accordance with the provisions of any enactment in force in the Bailiwick or any part thereof, including this Law, shall immediately give written notice and explanation to the Commission if the auditor –

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of the auditor's term of office, or

- (b) signs a qualified audit report on the accounts of the licensee,

and a notice under paragraph (a) shall contain –

- (i) a statement to the effect that there are no circumstances connected with the auditor ceasing to be auditor which the auditor considers should be brought to the attention of the Commission, or
- (ii) if there are any such circumstances, a report of them.

(5) The provisions of subsections (3) and (4) apply in relation to a former licensee of a class or description specified by rules of the Commission as they apply in relation to such a licensee, but only, subject to the provisions of subsection (6), for a period of six years immediately following the date on which the former licensee ceased to hold a licence.

(6) Where an auditor of a former licensee of a class or description specified by rules of the Commission appointed as mentioned in subsection (4) –

- (a) resigns or is removed before, or is not reappointed or does not seek re-appointment upon, the expiration of the auditor's term of office, or
- (b) signs a qualified audit report on the accounts of the former licensee,

by reason of any fraud of –

- (i) the former licensee, or
- (ii) any holder of a supervised role in respect of it or any of its employees,

perpetrated at a time when it held a licence, the time limit of six years specified in subsection (5) does not apply.

(7) A licensee or former licensee which contravenes any provision of subsection (1), (2) or (3) is guilty of an offence.

(8) An auditor who without reasonable excuse contravenes any provision of subsection (4) is guilty of an offence.

(9) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee, former licensee or auditor or class, description or category of licensee, former licensee or auditor from the application of all or any of the requirements of subsection (1), (2), (3) or (4), either generally or in any particular case or class of case, and whether before or after the circumstance, event or occasion in question.

**Communications by auditors, etc, to Commission.**

59. (1) No duty to which –

- (a) an auditor, or

- (b) a person appointed to make a report under section 12(5)(a), 22(5)(a) or 33(5)(a) or as a skilled person pursuant to the provisions of section 54,

is subject is contravened by reason of the auditor or that person communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies.

(2) It is the duty of –

- (a) an auditor, or
- (b) a person appointed to make a report under section 12(5)(a), 22(5)(a) or 33(5)(a) or as a skilled person pursuant to the provisions of section 54,

to communicate to the Commission matters to which this section applies and which the auditor or that person has reasonable cause to believe is, or is likely to be, of material significance for determining either –

- (i) whether (having regard to the applicable minimum criteria for licensing) a person is a fit and proper person to carry on any business regulated by this Law or to be the holder of a supervised role in respect of a licensee, or
- (ii) whether the Commission should perform its functions under the provisions of this Law or any other enactment for the purposes of the

protection of the public or the reputation of the Bailiwick as a finance centre.

(3) In relation to an auditor, this section applies to any matter of which the auditor becomes aware in the capacity of auditor and which relates to the business or affairs of –

- (a) a licensee,
- (b) an associated party of the licensee, or
- (c) where the licensee is a partnership or limited liability partnership, any company of which a partner in that partnership or a member of that limited liability partnership is a controller.

(4) In relation to a person appointed to make a report under section 12(5)(a), 22(5)(a) or 33(5)(a) or as a skilled person pursuant to the provisions of section 54, this section applies to any matter of which that person becomes aware in the capacity of the person appointed to make the report or as a skilled person and which relates to the business or affairs of –

- (a) the person or entity in relation to which the report is made,
- (b) any associated party of that person or entity, or
- (c) where that person or entity is a partnership or limited liability partnership, any company of which a partner

in that partnership or a member of that limited liability partnership is a controller.

(5) If it appears to the Commission, after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, that any accountants or class thereof or other persons of a class or description referred to in subsection (1)(a) or (b) are not subject to satisfactory rules or guidance made or issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1), the Commission may, after consultation as aforesaid in relation to the views of such bodies as appear to the Commission to represent the interests of accountants or other such persons and licensees, by rule specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it is the duty of any accountant or other such person to whom the rules apply to communicate a matter to the Commission in the circumstances specified in the rules.

(6) This section applies in relation to the auditor of a former licensee as it applies in relation to the auditor of a licensee.

**Power to request meetings with auditors, actuaries, etc.**

60. (1) The Commission may, whenever it thinks fit, and –
- (a) with a view to the performance of its functions, or
  - (b) if it considers it necessary or desirable to do so in the interests of the public or the reputation of the Bailiwick as a finance centre,

by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, associated parties or officers of, or holders of supervised roles in respect of, a licensee or former licensee (the "**client**") at which the Commission may discuss any aspect of the operation, regulation or licensing of the client.

(2) In the course of a meeting under this section the Commission or any person acting for and on behalf of the Commission –

- (a) may request the provision of such information and documents, in such form, and
- (b) may put such questions and request such explanations,

as the Commission or that person thinks fit, being information, documents, questions and explanations relevant to the purposes mentioned in subsection (1)(a) and (b).

(3) Where a client or any person upon whom a notice is served under subsection (1) fails to co-operate with the Commission or any person acting for and on behalf of the Commission when performing or attempting to perform their functions for the purposes of this section (whether by declining to reach agreement as to the timing or scope of a meeting under this section, or by failing to provide an authority, in whatever form reasonably required, to any persons in order that they may freely discuss matters with the Commission at such a meeting, or by failing to provide any information or document or to answer any question or give any explanation, or otherwise), that failure may be taken into account by the Commission in performing its functions.

(4) For the avoidance of doubt, a meeting (and all ancillary, incidental and supplementary communications and proceedings) may be requested, arranged and conducted, and other requests and requirements may be made or imposed, by the Commission pursuant to this section without the knowledge, presence, authority or consent of the client in question.

(5) The Commission may direct a person ("A") to whom a notice is given under subsection (1) that A must not, for such period (which may be indefinite) as the Commission may specify –

(a) inform, or cause or permit to be informed, the client –

(i) that the notice has been given, or

(ii) of the fact or content of a meeting requested or other request made under the provisions of this section or of anything said, disclosed or otherwise done or omitted to be done pursuant to such a meeting or request, or

(b) disclose, or cause or permit to be disclosed, to any person (including the client) any information or matter which is likely to prejudice –

(i) the inquiry to which the notice relates, or

(ii) the performance by the Commission of its functions,

and if A fails to comply with such a direction A is guilty of an offence unless A can show (for the avoidance of doubt, on a balance of probabilities) –

- (A) that A took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by A and by any person under A's control, or
- (B) in the case of an offence under paragraph (b), that A did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance by the Commission of its functions.

(6) A request made under the provisions of this section has effect and may be acted upon 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, or by any other act or omission, pursuant to such a request.

(7) Nothing in the provisions of this section compels the production or divulgence of a communication or item subject to legal professional privilege when it is in the possession of a person who is entitled to possession of it; but an advocate or other legal adviser may be required to give the name and address (including an electronic address) of any client.

(8) Where a person claims a lien on a document its production under the provisions of this section is without prejudice to the lien.

(9) Any obligation imposed by statute, contract or otherwise requiring a person to whom a notice is given under subsection (1) –

(a) to inform or seek the permission of another person before –

(i) agreeing to, arranging or conducting a meeting pursuant to the provisions of this section, or

(ii) complying with a request made under the provisions of this section, or

(b) to inform another person of –

(i) the fact or content of such a meeting or request, or

(ii) anything said, disclosed or otherwise done or omitted to be done pursuant to such a meeting or request,

is of no effect.

(10) A statement made by a person ("B") in response to a request made under this section –

- (a) may be used in evidence against B in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against B in criminal proceedings except –
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of B, or
  - (ii) in proceedings for –
    - (A) an offence under section 109(1) of the Enforcement Powers Law (but only in relation to a request made under this section),
    - (B) some other offence where, in giving evidence, B makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
    - (C) perjury, or
    - (D) perverting the course of justice.

(11) The provisions of this section –

- (a) are in addition to and not in derogation from the other provisions of this Law, and
- (b) for the avoidance of doubt, are without prejudice to the power of the Commission to request, arrange and conduct meetings with any person described in subsection (1) and the client or any other person.

*Advertising and soliciting business*

**Control of advertising.**

61. (1) The Commission may make rules in respect of the issue, form and content of advertisements to which this section applies ("**regulated advertisements**").

(2) Rules under this section may, without prejudice to the generality of subsection (1) or section 84 –

- (a) prohibit the issue of regulated advertisements of any class or description (whether by reference to their contents, to the persons by whom they are issued or otherwise),
- (b) make provision as to the matters which must or which may not be included in regulated advertisements,
- (c) provide for exemptions from any prohibition or requirement imposed by the rules, including

exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Commission.

(3) Subject to the provisions of subsection (4), a person who issues or causes or permits to be issued, in or from within the Bailiwick or (in the case of a Bailiwick body) in or from within any place whatsoever, an advertisement the issue of which is prohibited by rules under this section or which otherwise contravenes any provision of such rules is guilty of an offence.

(4) A person ("A") whose business it is to publish or arrange for the publication of advertisements is not guilty of an offence under subsection (3) if A proves (for the avoidance of doubt, on a balance of probabilities) that –

- (a) A received the advertisement for publication in the ordinary course of A's business,
- (b) the matters contained in the advertisement were not (wholly or in part) devised or selected by A or by any person under A's direction or control, and
- (c) A did not know and had no reason to believe that publication of the advertisement would constitute an offence.

(5) In this section a "**regulated advertisement**" means any advertisement containing –

- (a) an invitation to become a customer or client of or to use

services provided by any person carrying on or offering to carry on business regulated by this Law, or

(b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to a person becoming such a customer or client or using such services.

(6) For the purposes of this section –

(a) an advertisement issued or caused or permitted to be issued by any person by way of display or exhibition in a public place shall be deemed to have been issued or caused or permitted to be issued by that person on every day on which that person causes or permits it to be displayed or exhibited,

(b) the issue of an advertisement containing an invitation to become a customer or client of or to use services provided by a person specified in the advertisement, being a person carrying on or offering to carry business regulated by this Law, shall, unless the contrary is proved (for the avoidance of doubt, on a balance of probabilities), be presumed to have been caused by that person,

(c) an advertisement issued outside the Bailiwick shall be deemed to have been issued in the Bailiwick if it is directed to persons in the Bailiwick, or if it is made

available to them otherwise than by means published, circulated, displayed, broadcast or transmitted principally outside the Bailiwick or principally for reception outside the Bailiwick.

- (7) If the Commission considers that –
- (a) any regulated advertisement issued or proposed to be issued is misleading, or
  - (b) the issue, form or content of any such advertisement constitutes or would constitute a contravention of this section or any rule under it,

the Commission may give the advertiser a direction under this section.

(8) A direction under this section may (without limitation) contain any or all of the following –

- (a) a prohibition on the issue of any advertisements or any advertisements of a specified class or description,
- (b) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction,
- (c) a requirement to take all practical steps to withdraw, whether from display in any place or otherwise, any

advertisements or any advertisements of a specified class or description,

(d) a requirement that any advertisements or any advertisements of a specified class or description shall be modified in a specified manner,

(e) such ancillary, incidental and supplementary provision as the Commission may determine.

(9) A direction under this section –

(a) may have immediate effect, and

(b) if given orally, shall be confirmed by the Commission in writing not later than the next business day.

(10) A direction under this section may be varied or rescinded by the Commission by notice in writing to the advertiser concerned.

(11) A direction under this section shall remain in force until rescinded by the Commission, unless it is expressed to be of limited duration in which case it shall remain in force until –

(a) the occurrence of such date, time, event or circumstance as may be specified in it,

(b) such prohibitions, restrictions or requirements as may be so specified are complied with, or

(c) rescinded by the Commission, if earlier.

(12) In the event of failure by an advertiser to comply with a direction under this section, the Commission may, without prejudice to any other penalties, powers or proceedings in respect of the failure to comply, apply to the appropriate Court for an order requiring the advertiser to comply, in such manner as the appropriate Court thinks fit, with the direction; and an order of the appropriate Court under this subsection may contain such incidental, ancillary, consequential and supplementary provision, and may be made on such terms and conditions and subject to such penalty, as the appropriate Court thinks proper.

(13) The Commission may publish, in such manner (including, without limitation, by being placed on the Commission's official website) and for such period as the Commission may determine, notice of the imposition, variation or rescission of a direction and the date from which any such direction, variation or rescission is effective; and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the reputation of the Bailiwick as a finance centre.

The publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Commission may determine.

(14) In this section the "**appropriate Court**" means –

(a) the Court of Alderney, where the advertiser is within the jurisdiction of that Court,

- (b) the Court of the Seneschal, where the advertiser is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(15) A person who issues or causes or permits to be issued, in the Bailiwick or elsewhere, an advertisement the issue of which is prohibited by a direction under this section or who otherwise contravenes any provision of such a direction is guilty of an offence.

(16) The provisions of this section are in addition to and not in derogation from the provisions of section 39.

**Unsolicited calls.**

62. (1) The Committee may make regulations in respect of the making of unsolicited calls on persons in the Bailiwick, or from the Bailiwick on persons elsewhere, with a view to soliciting those persons or others to become a customer or client of or to use services provided by any person carrying on or offering to carry on business regulated by this Law.

(2) Regulations under this section may, without prejudice to the generality of subsection (1) or section 84 –

- (a) prohibit or restrict –
  - (i) the soliciting of persons described in subsection (1),
  - (ii) the making of agreements with persons on

whom unsolicited calls are made that any person shall become a customer or client of or use services provided by any person carrying on or offering to carry on business regulated by this Law, and

(iii) the procuring of persons on whom unsolicited calls are made to enter into such agreements,

(b) specify persons by whom or circumstances in which unsolicited calls may be made,

(c) require specified information to be disclosed to persons on whom unsolicited calls are made.

(3) A person who contravenes the provisions of any regulation under this section is guilty of an offence.

(4) In this section "**unsolicited call**" means a personal visit or oral, written or electronic communication made without express invitation.

*Making of rules, codes and guidance*

**Rules of the Commission.**

63. The Commission may make rules in relation to business regulated by this Law and the carrying on thereof by licensees and generally as to the conduct of, and the manner in which licensees conduct, or hold themselves out as conducting, their business.

**Particular matters that may be covered by rules.**

64. Rules under section 63 may, without limitation –

- (a) set out general conditions applicable to licensees (and accordingly make provision for matters in respect of which conditions may be imposed under section 14, 24 or 35),
- (b) prescribe the manner in which licensees must conduct, govern, manage and operate their business, and this includes, without limitation, matters relating to –
  - (i) corporate governance,
  - (ii) internal controls and reporting,
  - (iii) customer and client assets (tangible, intangible and virtual) and monies, including, without limitation –
    - (A) the holding (whether on trust or on any other basis or in any other manner or capacity), management, payment, attribution, separation and safeguarding thereof, including the holding thereof on trust, and
    - (B) in the event of insolvency, liquidation, dissolution, winding up, cessation,

deregistration, receivership, administration or administration management, the priorities and preferences to be accorded by law thereto,

- (iv) the outsourcing of functions,
  - (v) the provision of particulars in respect of business regulated by this Law being carried on,
  - (vi) insurance cover of any class or description,
  - (vii) financial resources,
  - (viii) business assets,
  - (ix) technical provisions,
  - (x) requirements in respect of capital, capital resources, funds and liquidity, and
  - (xi) the calculation, maintenance and approval of anything described in the above subparagraphs,
- (c) prohibit licensees from carrying on, or holding themselves out as carrying on, business regulated by

this Law –

- (i) of any specified class or description,
  - (ii) of a class or description, on a scale or in a manner other than that specified in a notice served on them by the Commission, or
  - (iii) in relation to persons of a specified class or description or persons other than those of a specified class or description,
- (d) impose requirements (as to time, frequency, manner or otherwise) in relation to the exercise by licensees of any discretionary powers afforded to them by customers or clients,
- (e) require licensees to employ persons of specified descriptions, and to have at their disposal specified resources, in connection with the carrying on of business regulated by this Law, and specify the powers and duties of persons so employed,
- (f) control the relationship between licensees and their servants and agents and, without limitation –
- (i) require licensees to impose and enforce restrictions on the activities carried on by their servants and agents,

- (ii) enable or require information obtained in the course of carrying on any class or description of the business of a licensee to be withheld from persons involved in carrying on any other class or description of the business of that licensee,
- (g) regulate or prohibit the carrying on of any other business in conjunction with any class or description of business regulated by this Law,
- (h) require specified information to be given in the form and manner and at the time specified by or under the rules –
  - (i) to the Commission,
  - (ii) to the public, or
  - (iii) to any prescribed class or description of persons,
- (i) require licensees to make provision for the protection of customers and clients in the event of the cessation of any business or any class or description of business carried on by them,
- (j) impose requirements as to the places and manner in which, and the times during which, licences are to be

displayed or available for inspection by the public,

- (k) make provision as to the settlement of disputes,
- (l) require the public disclosure by licensees of information of such class or description, at such times and intervals and in such form and manner as the rules may specify, and this includes, without limitation –
  - (i) information on the financial position and financial performance of licensees,
  - (ii) information on the basis, methods and assumptions on which any information is prepared,
  - (iii) information on risk exposures and the management thereof, and
  - (iv) information on management and corporate governance,
- (m) make provision as to the dealings and relationship of licensees with –
  - (i) other licensees,
  - (ii) other persons carrying on business regulated by this Law,

- (iii) other persons or bodies holding a licence, authorisation or registration under, or carrying on business regulated by, the provisions of the regulatory Laws,
  - (iv) customers and clients and potential customers and clients (including those of persons described in subparagraphs (i) to (iii)), and
  - (v) the Commission,
- (n) impose on licensees obligations to ensure compliance by them, their servants and agents and other persons of a class or description prescribed by the rules with the provisions of this Law,
- (o) make provision otherwise as to the licensing, resources and duties of licensees,
- (p) make provision governing applications for, and the issue and validity of, and otherwise in respect of, licences and other relevant documents, including (without limitation) provision –
  - (i) prescribing the information and documents to be furnished by an applicant for a relevant document, and the manner in which such information and documents are to be verified,

- (ii) prescribing the form and content of relevant documents,
- (iii) as to the renewal of relevant documents,
- (iv) prescribing minimum requirements (as to capital and liquidity, solvency, management, staff, resources and any other matter referred to in paragraph (b)) to be attained by an applicant for a relevant document,

and in this paragraph "**relevant document**" means a licence, authorisation, registration, permission, consent, exemption, dispensation, concession, authority, declaration, statement, notice, direction or other document sought from or granted or given by the Commission under the provisions of or for the purposes of this Law,

- (q) require the preparation, keeping, maintenance, submission to the Commission and publication of accounting records, and for the purposes of this paragraph "**accounting records**" includes accounts, profit and loss accounts, statements of comprehensive income, statements of account, consolidated accounts, balance sheets, statements of financial position, reports, financial records and other associated records and documents,

- (r) prescribe the form in which –
  - (i) a licensee's accounting records, and
  - (ii) the auditor's report on the licensee's accounts,are to be,
  
- (s) prescribe the information and particulars to be contained in accounting records and auditors' reports, and the documents to be appended to or accompany them,
  
- (t) prescribe the occasions, times, intervals or places at which, the periods in respect of which and the form and manner in which –
  - (i) accounting records, auditor's reports and documents referred to in the preceding paragraphs, and
  - (ii) any other accounting records, auditors' reports and documents –
    - (A) of a class or description specified in the rules, or
    - (B) required by the Commission in the

interests of the public or the reputation  
of the Bailiwick as a finance centre,

being records, reports or documents prepared,  
kept or maintained otherwise than in respect of  
a licensee (including, without limitation,  
records, reports or documents prepared, kept  
or maintained in respect of a holder of a  
supervised role, officer, employee, auditor,  
associated company, ancillary vehicle or special  
purpose vehicle or any other class or  
description of person or entity specified in the  
rules),

are to be drawn up, furnished and delivered,

- (u) specify the persons to whom accounting records, auditor's reports and documents referred to in the preceding paragraphs of this subsection are to be furnished or delivered, and the times, intervals and places of such furnishing or delivery,
- (v) require a licensee or other person to whom the rules apply to furnish to the Commission upon request any accounting records, auditors' reports and other documents required to be kept by or under the rules,
- (w) empower the Commission, by notice in writing, and subject to such conditions as it thinks fit, without

prejudice to the provisions of paragraph (q), to require a licensee or other person, instead of compliance with the rules, to furnish to the Commission upon request an abridged version of any accounting records required to be kept by or under the rules in such form and containing such information and particulars, and appending or accompanied by such documents, as the Commission may require.

**Rules as to consumer protection.**

65. (1) The Commission may make rules in respect of consumer protection in connection with business regulated by this Law including, without limitation, rules in respect of the following matters –

- (a) requiring persons carrying on business regulated by this Law to take steps to ensure that persons with whom they are entering into an agreement have legal capacity to enter into the agreement and understand the terms and conditions by which they will be bound,
- (b) business regulated by this Law involving high interest, short term and/or unsecured lending, and agreements –
  - (i) incurring high set-up or other initial or ongoing fees or charges,
  - (ii) attracting high interest rates or penalties,

- (iii) under which the level of fees, charges, interest or penalties changes, or some other disadvantage ensues, as a result of a failure to repay within a certain period or in other specified cases or circumstances, and
  - (iv) otherwise attracting unfair fees, charges, interest or penalties,
- (c) agreements entered into in contravention of the provisions of this Law and the consequences of such contraventions, including the enforceability, avoidance, modification, mitigation, disapplication or replacement of –
  - (i) such agreements, and
  - (ii) the terms and conditions thereof,
- (d) cooling off periods and rights of cancellation or rescission of, or withdrawal from, agreements or offers to enter into agreements, including, without limitation –
  - (i) the cases or circumstances where cooling off periods and rights of cancellation, rescission or withdrawal do or do not apply,
  - (ii) the times at or periods within which, and the

form and manner in which, any such right of cancellation, rescission or withdrawal may be exercised,

(iii) the giving of information as to any such right of cancellation, rescission or withdrawal, and the form and manner in which, and the times at or periods within which, such information must be given,

(iv) the restitution of property and the making and recovery of payments where any such right of cancellation, rescission or withdrawal is exercised,

(e) unfair terms and conditions of agreements and unfair practices, including –

(i) terms, conditions and practices deemed to be unfair (for example, by reason of their causing a significant imbalance in the parties' respective rights and obligations to the detriment of the customer or client),

(ii) the consequences of the inclusion of unfair terms and conditions and the pursuit of unfair practices,

(iii) the enforceability, avoidance, modification,

mitigation, disapplication or replacement of –

- (A) unfair terms and conditions, and
- (B) the consequences of unfair practices,  
and
- (iv) the terms and conditions which must or must not be included in agreements,
- (f) the form and manner of communication of agreements relating to business regulated by this Law,
- (g) the regulation of –
  - (i) restrictions on the rights of customers, clients and other persons or the liabilities of service providers, and
  - (ii) notices (however communicated) which restrict such rights or liabilities,
- (h) secondary agreements, linked agreements and series of agreements, and the taking into account of all terms and conditions affecting the rights, obligations and liabilities of the parties,
- (i) the powers of the Commission and the rights, obligations, liabilities, remedies, penalties, sanctions

and other consequences (civil or administrative) in respect of matters set out in the preceding paragraphs,

- (j) the exercise by the Commission of its functions (including, without limitation, its powers to grant, refuse, suspend, revoke and impose conditions in respect of licences and to issue directions) in respect of contraventions and other matters set out in the preceding paragraphs.

(2) In subsection (1) "**agreements**" includes regulated agreements and other contracts, engagements and transactions.

(3) The powers of the Commission under this section are in addition to and not in derogation from the generality of sections 63, 64 and 84.

**Rules as to annual return.**

66. (1) The Commission may make rules requiring the submission by licensees to the Commission, in such form and manner, at such times or intervals and in respect of such periods as may be prescribed, of an annual return.

(2) The annual return shall contain such information and shall be accompanied by such documents as may be prescribed, being information and documents considered by the Commission to be necessary –

- (a) for the purposes of enabling the Commission to perform its functions,
- (b) for the purposes of responding to the obligations of the

Bailiwick in relation to international co-operation and mutual assistance, including without limitation information and documents relating to financial crime, money laundering and financing of terrorism,

- (c) in the interests of –
  - (i) the public, or
  - (ii) the reputation of the Bailiwick as a finance centre.

(3) Information and documents submitted pursuant to rules under this section shall be in such form as may be prescribed or, if no form is prescribed, as the Commission may reasonably require (but without prejudice to the provisions of section 81).

(4) The information and documents that rules under this section may require to be submitted to the Commission include, without limitation –

- (a) audited accounts and auditors' management letters (or confirmation that the auditors have confirmed that no auditors' management letter is required to be issued),
- (b) an up to date business plan,
- (c) a 12 month financial forecast,
- (d) a certificate signed by a prescribed person confirming –

- (i) compliance throughout the period covered by the annual return with the provisions of this Law, the appointed Laws and any other prescribed enactment,
  - (ii) that accounts have been prepared and deposited in accordance with the provisions of this Law,
- (e) the names of and other prescribed particulars in respect of the holders of supervised roles in respect of, or the officers or employees of, a licensee,
- (f) the number of staff employed,
- (g) the number of customers and clients, whether in total or whether in respect of different classes or descriptions of business regulated by this Law,
- (h) the licensee's estimate of the value of assets held by it or on its behalf,
- (i) such other information and documents as may be prescribed or as the Commission may determine.

(5) Rules under this section may, without limitation, make provision in relation to –

- (a) the furnishing, keeping and obtaining, by persons of prescribed descriptions, of information, documents and records of prescribed classes or descriptions,
- (b) the provision of copies of or extracts from, and of explanations as to, information and documents submitted to the Commission in accordance with the rules,
- (c) the making of inquiries and the answering of questions as to annual returns and any information and documents submitted to the Commission in accordance with the rules,
- (d) the provision of reports, in such form as may be prescribed or as the Commission may determine, by persons who are accountants or who otherwise have relevant professional skill and who are nominated or approved by the Commission,
- (e) the payment of any fees prescribed by regulations under section 37 in respect of the submission of annual returns,
- (f) the sanctions, penalties and remedies for contraventions of the rules, provided that rules under this section may not prescribe criminal sanctions or penalties,

- (g) the service of notices,
- (h) the submission of a single or composite return for licensees who also hold a licence under any of the regulatory Laws.

(6) In this section "**prescribed**" means prescribed by the rules.

**Rules as to annual review.**

67. (1) Without prejudice to any other provision of this Law, a licensee shall review, in accordance with the provisions of rules made by the Commission under this section, the business carried on in or from within the Bailiwick or elsewhere by –

- (a) the licensee,
- (b) any associated party or group entity thereof,
- (c) any undertaking established by the licensee (including, without limitation, any branch, subsidiary, ancillary vehicle or special purpose vehicle thereof), or
- (d) any person or entity in or with which the licensee has or has at any time had any direct or indirect proprietary, financial, economic or other interest or connection,

not less than once in every financial year (but subject to the provisions of the rules).

(2) Rules of the Commission under this section may without limitation require a review under this section of or in respect of the following matters –

- (a) the licensee's individual loans, asset classification and loss provisioning (including on and off balance sheet exposures),
- (b) whether the licensee has in place control systems which are effective to ensure –
  - (i) that all returns and other documents required by or under the provisions of this Law to be submitted to the Commission are duly submitted, and
  - (ii) that any inaccuracies in any such returns and other documents are identified, corrected and reported to the Commission expeditiously,
- (c) whether the licensee's financial record keeping systems and data systems are reliable,
- (d) whether any activity has been entered into in the course of the licensee's business in respect of which neither the licensee nor any holder of a supervised role in respect of the licensee has a sound knowledge,
- (e) the responsibilities and conduct of the licensee's board of directors with respect to corporate governance

principles,

(f) whether there has been effective control by the licensee's board of directors over every aspect of risk management,

(g) the licensee's control environment,

(h) compliance by the licensee and the holders of supervised roles in respect of, and officers and employees of, the licensee with –

(i) the provisions of this Law, the appointed Laws and any other enactment prescribed by the rules, and

(ii) the minimum criteria for licensing,

(i) any other matters considered by the Commission to be necessary or desirable.

(3) Rules of the Commission under this section may also, without limitation –

(a) specify the maximum amount of time that may elapse between the completion of any two successive annual reviews,

(b) require a licensee, either immediately or within such

period as may be prescribed or as the Commission may determine –

- (i) to notify the Commission that it has completed the annual review,
  - (ii) if requested, to provide the Commission with a copy of the annual review, and
  - (iii) if an annual review reveals shortcomings or deficiencies in respect of any of the matters set out in the rules –
    - (A) to report the shortcomings or deficiencies to the Commission together with details of the steps it proposes to take to remedy the position, and
    - (B) to provide the Commission with such documents, information and other evidence and verification as the Commission may require for the purpose of establishing that such steps have been taken,
- (c) require the annual review to be made in such form and manner and to contain or be accompanied by such information and documents as may be prescribed or as

the Commission may determine,

- (d) specify the dates, times, intervals, occasions, events or circumstances on, at, in or within which, and periods in respect of which, the annual review is to be made, and
- (e) make provision in relation to any other matter in respect of which rules may be made under section 63 or 66.

(4) In this section –

"**annual review**" means the review required to be carried out by a licensee by or under the provisions of this section,

"**financial year**" means the period covered by a licensee's accounts in respect of its business,

"**prescribed**" means prescribed by the rules.

**Codes of practice and guidance.**

68. (1) The Commission, after consultation with –
- (a) the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, and

- (b) such other persons as appear to the Commission to be appropriate,

may (without prejudice to any other power conferred by the provisions of this Law or the regulatory Laws as to the making of codes or guidance) issue such codes of practice and/or such guidance as the Commission thinks necessary –

- (i) for the purpose of providing clarification or guidance as to the duties, requirements and standards to be complied with (including, without limitation, duties, requirements and standards as to customer and client protection and market conduct) and the procedures (whether as to identification, record-keeping, internal reporting, internal controls, corporate governance, training or otherwise) and best practices to be observed by –

- (A) persons carrying on business regulated by this Law, or

- (B) any other persons to whom the code or guidance applies,

- (ii) generally for the purposes of providing clarification or guidance in respect of the provisions of or for the purposes of, or in connection with the administration, implementation or enforcement of, this Law,

and without limitation a code of practice or guidance under this section may make provision in respect of any matter in respect of which rules may be made under the provisions of this Law.

(2) The Commission may, after consultation as mentioned in subsection (1), amend the whole or any part of a code of practice or guidance issued under this section and issue that amended code or guidance.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by any person of a provision of a code of practice or guidance issued under this section does not of itself render that person liable to any criminal proceedings; but –

- (a) the Commission, in the performance of its functions, may take the provision of the code or guidance and the contravention thereof into account in determining whether and in what manner to perform those functions, and
- (b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the provision of the code or guidance is admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question.

PART VII  
DISCLOSURE OF INFORMATION

**Restrictions on disclosure of information.**

69. (1) Subject to the provisions of section 70 –

- (a) no person who under the provisions of or for the purposes of this Law receives information relating to the business, property or 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.**

70. Section 69 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 –
  - (i) the Commission, or
  - (ii) any body established by Ordinance under section 48 of the Banking Supervision Law or section 84 of the Insurance Business Law for the purposes of a scheme for the protection of customers, clients, depositors, investors or policyholders,to perform its functions,
- (c) without prejudice to the generality of paragraph (b), the disclosure of information by the Commission to the auditor of a licensee or former licensee if it appears to the Commission that the disclosure would enable or assist the Commission to perform its functions or would otherwise be in the interest of the public or the reputation of the Bailiwick as a finance centre,
- (d) where, in order to enable or assist it to perform its functions, the Commission considers it necessary to

seek advice from a qualified person on any matter of law, accountancy or valuation (actuarial or otherwise) 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 that person is properly informed as to the matters on which the advice is sought,

- (e) the disclosure by the Commission of information in the interests of the public or the reputation of the Bailiwick as a finance centre,
- (f) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to perform its functions,
- (g) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under the provisions of this Law or any other enactment,
- (h) 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 the provisions of this Law or otherwise,

(i) the disclosure of information in connection with any other proceedings, enforcement action or sanction (civil, criminal or administrative) arising out of or under the provisions of this Law or any other enactment,

(j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of the professional duties of –

(i) an auditor of a licensee or former licensee, or

(ii) a person appointed to make a report under section 12(5)(a), 22(5)(a) or 33(5)(a) of this Law, section 7(1)(b) or 8 of the Enforcement Powers Law, section 3(3)(a) of the Protection of Investors Law, section 5(5)(a) of the Banking Supervision Law, section 5(6)(a) of the Regulation of Fiduciaries Law, section 6(5)(a) or 36 of the Insurance Business Law or section 3(5)(a) or 23 of the Insurance Managers and Intermediaries Law, or

(iii) a person appointed as a skilled person pursuant to the provisions of section 54 of this Law or the

corresponding provisions of the regulatory  
Laws,

(k) the disclosure by the Commission to Her Majesty's  
Procureur or an officer of police of –

(i) information obtained under the provisions of  
section 53 or 54 of this Law or sections 7 to 13 of  
the Enforcement Powers Law, or

(ii) information in the possession of the  
Commission as to any suspected offence in  
relation to which the powers conferred by those  
sections are exercisable,

(l) where information is disclosed to an officer of police  
under paragraph (k), 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,

(m) the disclosure of information to a person or entity  
responsible for a scheme for compensating customers  
or clients (whether in the Bailiwick or elsewhere) –

(i) if it appears to the Commission that the  
disclosure would enable or assist the recipient  
of the information or the Commission to

perform its functions, and

- (ii) if the recipient has given to the Commission a written undertaking that the information will not be further disclosed without the prior consent of the Commission,
- (n) the disclosure of information by the Commission for the purposes or in the circumstances described in –
- (i) section 21(2) of the Financial Services Commission Law,
  - (ii) section 49 of the Protection of Investors Law,
  - (iii) section 45 of the Banking Supervision Law,
  - (iv) section 39 of the Regulation of Fiduciaries Law,
  - (v) section 80 of the Insurance Business Law,
  - (vi) section 57 of the Insurance Managers and Intermediaries Law, or
  - (vii) section 20 of the Enforcement Powers Law, or
- (o) the disclosure of information for the purpose of enabling or assisting –

- (i) the Registrar of Companies,
- (ii) the Alderney Registrar,
- (iii) the Legal Aid Administrator (the office of which was established under section 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003)<sup>i</sup>,
- (iv) the Office of the Financial Services Ombudsman established by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014<sup>j</sup>,
- (v) the Principal Ombudsman appointed under section 4 of that Law,
- (vi) the Registrar of Beneficial Ownership of Legal Persons (the office of which was established by section 1 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>k</sup>),
- (vii) the Registrar within the meaning of the Beneficial Ownership of Legal Persons

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<sup>i</sup> Order in Council No. VI of 2004; this enactment has been amended.

<sup>j</sup> Order in Council No. I of 2015; this enactment has been amended.

<sup>k</sup> Order in Council No. VI of 2017; this enactment has been amended.

(Alderney) Law, 2017<sup>l</sup>,

(viii) the Data Protection Authority established by Part XI of the Data Protection (Bailiwick of Guernsey) Law, 2017<sup>m</sup>, or

(ix) the Commissioner appointed by the Data Protection Authority under paragraph 5 of Schedule 6 to that Law,

to perform their respective functions.

**Information supplied to Commission by relevant supervisory authority.**

71. (1) This section applies, to the exclusion of section 69, to information relating to the business, property or affairs of any person provided to the Commission for the purposes of its functions, whether under the provisions of this Law or otherwise, by a relevant supervisory authority.

(2) Information described in subsection (1) –

(a) may only be used by the Commission for the purpose for which it was provided by the relevant supervisory authority,

(b) may only be disclosed by the Commission with the consent of, and for purposes or in circumstances

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<sup>l</sup> Order in Council No. VII of 2017; this enactment has been amended.

<sup>m</sup> Order in Council No. VI of 2018; this enactment has been amended.

approved by, that authority, and

- (c) may not be disclosed by the Commission to the person to whom it relates except with the express approval of that authority.

(3) In requesting the consent of a relevant supervisory authority for the purposes of subsection (2)(b), the Commission must provide that authority with –

- (a) the name of any person to whom it proposes to disclose the information, and
- (b) an accurate description of that person's functions.

(4) Where under this section the Commission discloses information described in subsection (1), it may do so only in accordance with any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the consent of the relevant supervisory authority was given.

(5) For the avoidance of doubt, and without limitation, nothing in this section prevents the disclosure of information by the Commission –

- (a) for the purposes or in the circumstances described in section 70(h), or
- (b) in accordance with the provisions of any of the appointed Laws in circumstances where they provide that the disclosure does not contravene any obligation as to confidentiality or other restriction on the

disclosure of information imposed by statute, contract or otherwise.

- (6) No person who –
  - (a) receives information described in subsection (1) from the Commission, or
  - (b) obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information except with, and in accordance with the conditions of, the consent of the Commission.

(7) A person who discloses information in contravention of subsection (6) is guilty of an offence.

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

72. The Royal Court or any division thereof must, before directing the Commission (whether pursuant to the provisions of this Law or otherwise) to disclose to any person any information relating to the business, property or affairs of any person held, received or obtained by it under the provisions of or for the purposes of this Law or the regulatory Laws (whether pursuant to those provisions or otherwise) –

- (a) take into account –
  - (i) any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise to

which the Commission is subject in respect of the information,

(ii) any undertaking entered into by the Commission in relation to the use, disclosure, safekeeping and return of the information, and

(iii) any conditions (whether as to the use and disclosure of the information or otherwise) subject to which the information is held or was received or obtained, and

(b) where the information has been supplied to the Commission by a relevant supervisory authority –

(i) give the Commission a reasonable opportunity to consult that authority with a view to obtaining its consent to the disclosure, and

(ii) where such consent is not forthcoming, or is given subject to conditions, take into account the authority's decision and the reasons for it.

## PART VIII

### OFFENCES AND PENALTIES

#### **Penalties.**

73. (1) A person guilty of an offence under sections 45(5), 57(4), 58(7) or (8) or 61(3) is liable –

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

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

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by subsections (1)(a) and (2)(a) are applicable notwithstanding the restrictions on the sentencing powers of those courts imposed by –

- (a) section 13 of the Government of Alderney Law, 2004<sup>n</sup>  
(the "**Government of Alderney Law**"), and
- (b) section 11 of the Reform (Sark) Law, 2008<sup>o</sup>.

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<sup>n</sup> Order in Council No. III of 2005; this enactment has been amended.

<sup>o</sup> Order in Council No. V of 2008; this enactment has been amended.

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

**Criminal liability of directors, etc.**

74. (1) Where an offence under the provisions of this Law is committed by a company or other legal person 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 of the following persons –

- (a) in the case of a company, any director, controller, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any member,
- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

that person as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company or other legal person are managed by its members, subsection (1) applies to a member in connection with that

member's functions of management as if that member were a director.

**Criminal proceedings against unincorporated bodies.**

75. (1) Where an offence under the provisions of 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, any of the following persons –

- (a) in the case of –
  - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
  - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

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

(2) Where an offence under the provisions of this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall, without prejudice to subsection (1), be brought in the name of that body and not in the name of any of its members.

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

**Defence of due diligence.**

76. In any proceedings for an offence under the provisions of this Law it is a defence for the accused to prove (for the avoidance of doubt, on a balance of probabilities) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the accused and by any person under the control of the accused.

**Jurisdiction.**

77. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under the provisions 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.

PART IX  
GENERAL PROVISIONS

*Miscellaneous*

**Commission to have regard to guidance, etc, under FSC Law and other matters.**

78. (1) In performing its functions under the provisions of this Law –

- (a) the Commission must (so far as relevant) –
- (i) take into account any written guidance of a general character given by the Committee under section 7(1)(a) of the Financial Services Commission Law, and
  - (ii) act in accordance with any written directions of a general character given by the Committee under section 7(1)(b) of that Law,

concerning the policies to be followed by the Commission in relation to the supervision of finance business in the Bailiwick and the manner in which any function of the Commission is to be performed,

- (b) the Commission may take into account (so far as relevant) –
- (i) any guidance notes or international standards relating to business regulated by this Law and regulation issued by a body recognised by the Commission and identified in a code issued under the provisions of this Law,
  - (ii) the provisions of any rules, code, guidance, principles, policies or instructions issued under the provisions of this Law or the Financial Services Commission Law,

- (iii) any matter to which it may have regard under the provisions of this Law when performing the function in question, and
  - (iv) for the avoidance of doubt, any investigation, prosecution, proceedings, enforcement action, duty, obligation, liability, penalty, sanction (civil, criminal or administrative), injunction, order or other remedy undertaken, imposed or obtained under the provisions of or for the purposes of this Law or the regulatory Laws in respect of any licensee, holder of a supervised role or other person or entity, and
- (c) the Commission must have regard to the objectives of –
- (i) protecting the public and the reputation of the Bailiwick as a finance centre,
  - (ii) ensuring that any relevant markets are fair, efficient and transparent, and
  - (iii) reducing risks to the financial system in the Bailiwick.

(2) The provisions of this section are in addition to and not in derogation from any other provision of this Law or any other enactment or rule of law

relating to the functions of the Commission or the performance thereof and the matters which it must or may take into account.

**Verification of information and execution of documents.**

79. (1) The Commission may require that any information, statement or other document provided to it in compliance or purported compliance with any obligation imposed by or under the provisions of this Law shall be verified in such manner as the Commission may reasonably specify.

(2) Any information, statement or other document which is not verified in accordance with a requirement made under subsection (1) shall be deemed for the purposes of this Law not to have been provided in accordance with the obligation referred to in that subsection and the said obligation shall accordingly be deemed not to have been complied with.

**Service of notices and documents.**

80. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Law may be given to or served upon –

- (a) an individual ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,
- (b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to –

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body –

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post to –

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post to, its principal office in the Bailiwick, or by being transmitted to its electronic address,

(f) subject to the provisions of section 81, the Commission or its Chairman, by being left at, or sent by post to, the principal office of the Commission in the Bailiwick,

and in this section –

(i) "**by post**" means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) "**electronic address**" includes, without limitation, an e-mail address and telecommunications address,

(iii) "**relevant electronic address**" means an electronic address –

- (A) with which, in the opinion of the Commission, the person concerned has a personal, business or other connection, and
- (B) a document transmitted to which is likely to come to the attention of the person concerned,
- (iv) "**summons**" includes any document compelling a person's attendance before the court, and
- (v) "**transmitted**" means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication.

(2) If under the provisions of or for the purposes of this Law a person notifies the Commission of –

- (a) an address for service within the Bailiwick, or
- (b) an electronic address at which the service of documents may be effected on that person,

any document other than a summons to be given to or served upon that person under

those provisions or for those purposes may be given or served by being left at, or sent by post to, that address in the Bailiwick or (as the case may be) by being transmitted to that electronic address.

(3) If service of a document under the provisions of or for the purposes of this Law 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 this section and of any other rule of law in relation to the service of documents, no document to be given to or served on the Committee or any other committee of the States of Guernsey or the Commission or its Chairman under the provisions of or for the purposes of 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 the provisions of or for the purposes of this Law is a minor or person under guardianship, the document shall be served on that person's guardian; and if there is no guardian, the Commission (or, with leave of the court, any other person) may apply to the appropriate Court for the appointment of a person to act as guardian under those provisions or for those purposes; and in this subsection the "**appropriate Court**" means –

- (a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,

- (b) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (c) the Royal Court, in any other case.

(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 day which is not a business day.

(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.

(9) A document shall be deemed for the purposes of this Law to have been –

- (a) addressed to the person concerned, and
- (b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

**Documents to be submitted in electronic form and by electronic means.**

81. (1) Where a document is required or permitted to be submitted to the Commission by or under the provisions of or for the purposes of this Law, and except to the extent that express provision to the contrary is made by or under the provisions of this Law, the document –

- (a) shall be in such electronic form, and shall be submitted by such electronic means and to such electronic address, as the Commission may require, whether in any particular case or class of cases or generally, or
- (b) shall be in such non-electronic form, and shall be submitted by such non-electronic means, as the Commission may in its absolute discretion require in any particular case or class of case.

(2) Where a document is required by or under the provisions of or for the purposes of this Law to be in such form as the Commission may require, the Commission may, in its absolute discretion and without limitation, require the document to be in such electronic form or non-electronic form as the Commission may require, whether in any particular case or class of cases or generally.

(3) This section applies, without limitation, to any, and to anything accompanying any, application, notice, return, validation, accounts, report, statement, consent, declaration, questionnaire, computation, plan or signature.

(4) This section is in addition to and not in derogation from the provisions of the Electronic Transactions (Guernsey) Law, 2000<sup>P</sup>, the Electronic Transactions (Alderney) Law, 2001<sup>Q</sup> and the Electronic Transactions (Sark) Law, 2001<sup>R</sup>.

**Evidence.**

82. (1) In any proceedings, a certificate signed on behalf of the Commission certifying –

- (a) that a particular person is or is not a licensee or former licensee or was or was not a licensee or former licensee at a particular time,
- (b) that a particular person or business was or was not registered under the provisions of the NRFBSB Law or was or was not so registered at a particular time,
- (c) the date on which a particular person or business obtained or ceased to hold a licence or was registered or ceased to be registered as mentioned in paragraph (b),

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<sup>P</sup> Order in Council No. VIII of 2000; this enactment has been amended.

<sup>Q</sup> Order in Council No. XXVI of 2001; this enactment has been amended.

<sup>R</sup> Order in Council No. X of 2001; this enactment has been amended.

- (d) the terms of any conditions imposed in respect of a particular person's licence or subject to which a person or business was registered as mentioned in paragraph (b),

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.

*Liability of States, Commission, etc*

**Exclusion of liability.**

- 83. (1) No liability shall be incurred –
  - (a) by, or by any committee of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
  - (b) by the Commission,
  - (c) by Her Majesty's Greffier, Her Majesty's Sheriff, the Registrar of Companies, the Alderney Greffier or the Prévôt of Sark,
  - (d) by any member, officer or servant of any of the aforesaid, or
  - (e) by any other person or entity specified by Ordinance of the States,

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 the provisions of this Law unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>s</sup>.

(3) The States may by Ordinance amend this section.

*Ordinances, regulations and rules, etc*

**Ordinances, regulations, rules, codes and guidance, etc - general.**

84. (1) The States may by Ordinance make such provision as they think fit –

- (a) for the purpose of carrying the provisions of this Law into effect,
- (b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, and
- (c) without prejudice to any other provision of this section, for the purposes of enabling and facilitating the undertaking of lending secured against real property

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<sup>s</sup> Order in Council No. XIV of 2000; this enactment has been amended.

situated in the Bailiwick and used for residential purposes (including, without limitation, the undertaking of such lending by means of products commonly referred to as equity release mortgages or lifetime mortgages), including without limitation provision repealing, replacing, amending, extending, adapting, modifying or disapplying any enactment or rule of customary or common law, prescription, practice or procedure.

(2) Any Ordinance, regulation, rule, code, guidance, principles, policies or instructions under the provisions of this Law –

(a) may be amended or repealed by a subsequent Ordinance, regulation, rule or code, or by subsequent guidance, principles, policies or instructions, as the case may be, hereunder,

(b) may contain such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to be necessary or expedient, including (without limitation), in the case of an Ordinance or regulation –

(i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences

(but subject to the provisions of subsection (3)),

- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(3) The power conferred by subsection (2)(b)(i) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>t</sup>, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(4) The States may by Ordinance empower –

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<sup>t</sup> Order in Council No. XVIII of 2009; this enactment has been amended.

- (a) the Commission or the Committee (or such other committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark as may be specified by the Ordinance) to make regulations, and
- (b) the Commission, any committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, and any other body (including, without limitation, any court in Guernsey, Alderney or Sark) or office holder, to make or issue rules, orders, rules of court, codes, guidance, principles, policies and instructions,

in respect of anything in relation to which provision may be made under this Law by Ordinance of the States, except (subject to the provisions of subsection (2)(b)) provision amending this Law.

(5) Any power conferred by the provisions of this Law to make any Ordinance, regulation, rule, code, guidance, principles policies or instructions may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) The Committee (and any other committee of the States of Guernsey) shall, before recommending the States to agree to make an Ordinance under the provisions of this Law (other than an Ordinance under section 95), consult –

- (a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney, and
- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

(7) An Ordinance made under the provisions of this Law (other than an Ordinance under section 95) ceases to have effect –

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(9) In this section –

- (a) "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation, and
- (b) "**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

(10) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations, rules, codes, guidance, principles, policies or instructions (and vice versa).

(11) Rules, codes, guidance, principles, policies and instructions under the provisions of this Law shall be made by an instrument in writing.

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

85. Regulations made under the provisions of this Law –

- (a) where made by the Commission, shall be made after consultation with the Committee, the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark,
- (b) where made by the Committee or any other committee of the States of Guernsey, 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 Policy and Finance Committee of the Chief Pleas of Sark,
- (c) whether made by the Commission or by the Committee or any other committee of the States of Guernsey, 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.

**Publication of regulations, rules, codes and guidance, etc.**

86. (1) The Commission shall publish, in such manner as it considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, on such terms and conditions as it considers appropriate and subject to such charges (if any) as it may decide to levy to cover the costs of publication –

- (a) any regulations, rules, codes, guidance, principles and instructions made or issued by the Commission in the performance of its functions under the provisions of this Law, and
- (b) any policies issued by the Commission in respect of the granting, variation, suspension and revocation by it, in pursuance of its functions under the provisions of this Law, of any licences, consents, registrations, permissions and authorisations or otherwise in respect of the performance of its functions.

(2) Without prejudice to the provisions of subsection (1), the Commission may charge such fee –

- (a) as may be prescribed by regulations under section 37,  
or

- (b) if no such fee is so prescribed, as it reasonably thinks fit,

for providing a person with a copy of any regulations, rules, codes, guidance, principles, instructions and policies described in paragraph (a) or (b) of that subsection.

**Making and effect of contravention of rules.**

87. (1) Before making any rules under the provisions of this Law the Commission shall, unless it considers that the delay involved would be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, publish proposals for the rules –

- (a) in such manner as the Commission considers best calculated to bring them to the attention of persons likely to be affected by them and the public in general, and
- (b) for such period as the Commission may determine,

and shall consider any representations made to the Commission concerning those proposals.

(2) Rules of the Commission under the provisions of this Law shall specify the provisions under which they are made.

(3) Without prejudice to any other provision of this Law or any other enactment as to the consequences of any such contravention, a contravention by

any person of any rule of the Commission under the provisions of this Law does not of itself render that person liable to any criminal proceedings, but –

- (a) the Commission, in the performance of its functions, may take the rule and the contravention thereof into account in determining whether and in what manner to perform those functions, and
- (b) in any legal proceedings (criminal or otherwise), whether or not under the provisions of or for the purposes of this Law, the rule is admissible in evidence, and if the rule appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the rule may be taken into account in determining that question.

**Regulations and rules are statutory instruments.**

88. For the avoidance of doubt, regulations and rules under the provisions of this Law are statutory instruments within the meaning of the Guernsey Statutory Instruments (Registration) Ordinance, 1949<sup>u</sup>, the provisions of which shall apply accordingly.

**Power to adapt rules, codes and guidance, etc, under this Law.**

89. (1) Subject to the provisions of subsection (2), the Commission may, of its own motion or on the application of a licensee or an applicant for a licence, by notice in writing served on the licensee or applicant adapt the requirements of any

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<sup>u</sup> Recueil d'Ordonnances Tome X, p. 16.

rules, code, guidance, principles, policies or instructions issued under the provisions of this Law to the circumstances of, or to the circumstances of any particular business regulated by this Law carried on by, the licensee or applicant.

(2) The Commission shall not exercise the powers conferred by subsection (1) in any case unless it appears to the Commission that –

- (a) compliance with the requirements in question would be unduly burdensome for the licensee or applicant having regard to the benefit which compliance would confer on customers and clients, and
- (b) the exercise of those powers will not result in any undue risk to customers or clients.

(3) The powers conferred by subsection (1) may be exercised unconditionally or subject to conditions.

(4) In this section "**adaptations**" includes exceptions and modifications (and related expressions shall be construed accordingly).

*Interpretation, repeals, commencement, etc*

**Interpretation.**

90. (1) In this Law, unless the contrary intention appears, the words and expressions listed below have the following meanings and shall be construed as follows (and related expressions shall be construed accordingly) –

"**accountant**" means a person who is qualified for appointment as an

auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (G) Law,

**"actuary"** means –

- (a) a fellow of the Institute and Faculty of Actuaries in the United Kingdom (or a member or other person subject to the rules of such other body as the Committee may approve by regulation),
- (b) any other person approved for the time being by the Commission and authorised by the Commission to act as an actuary for –
  - (i) a person holding a licence under the provisions of the regulatory Laws, or
  - (ii) an authorised or registered collective investment scheme within the meaning of the Protection of Investors Law, or
- (c) any other person who performs or has performed the functions of an actuary of a person or entity which holds or is deemed to hold, or in respect of which there is held or deemed to be held, a licence, consent, registration, permission or authorisation from the Commission under the provisions of the regulatory Laws (including, for the avoidance of doubt, and without limitation, an authorised or registered

collective investment scheme),

**"administration manager"** means a person appointed by the Royal Court under the provisions of section 81(2) of the Enforcement Powers Law,

**"advertisement"** includes every form of advertising and any means of bringing an invitation or information to the notice of any person including, without limitation, by publication, broadcast, electronic means, circulars, notices, window displays, posters, brochures and leaflets, and references to the **"issue"** of an advertisement shall be construed accordingly,

**"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 (A) Law,

**"Alderney Greffier"** means the person appointed to the office of Greffier under section 20 of the Government of Alderney Law,

**"Alderney Registrar"** means the Alderney Greffier, performing the functions of Registrar under the Companies (A) Law,

**"alternative non-bank credit or finance intermediation"** : see section 30,

**"ancillary vehicle"** : see section 20(3) of the Protection of Investors Law,

**"appointed Laws"** means –

- (a) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991<sup>v</sup>,
- (b) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>w</sup> (the "**Criminal Justice (Proceeds of Crime) Law**"),
- (c) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>x</sup>,
- (d) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>y</sup>,
- (e) the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>z</sup>, or
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Commission,

**"appointed person"** : see section 53(1),

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<sup>v</sup> Ordres en Conseil Vol. XXXIII, p. 81; this enactment has been amended.

<sup>w</sup> Ordres en Conseil, Vol. XXXIX, p. 137; this enactment has been amended.

<sup>x</sup> Order in Council No. VII of 2000; this enactment has been amended.

<sup>y</sup> Order in Council No. XVI of 2002; this enactment has been amended.

<sup>z</sup> Order in Council No. XVI of 2007; this enactment has been amended.

**"appropriate Court"** : see sections 39(13), 61(14) and 80(6),

**"approved supervised role"** : see section 41(1),

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

- (a) the spouse, civil partner or child of that person,
- (b) a person with whom that person is living as if they were married or civil partners (a "**cohabitant**"),
- (c) any body of which that person is a director,
- (d) any person who is an employee or partner (or fellow member, in the case of a limited liability partnership) of that person,
- (e) if 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,
- (f) where that person is an unincorporated body, any director of that body,

- (g) if that person has with any 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 (whether in general meeting or otherwise) in relation to a company, that other person:

Provided always that the Commission may by regulation amend the definition of "**associate**",

"**associated company**" means a company of a description set out in paragraph (e) of the definition of "**associated party**",

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

- (a) any person who is a partner (or fellow member, in the case of a limited liability partnership) of that person,
- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) any body in respect of which that person holds a supervised role,
- (e) 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 (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity:

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

"**auditor**" means –

- (a) a person who is qualified for appointment as an auditor pursuant to section 260 (as read in conjunction with any Ordinance under section 533) of the Companies (G) Law and who is, where required by or under the provisions of this Law, approved by the Commission to audit the accounts of licensees,

- (b) any other person who performs or has performed the functions of an auditor of a licensee,

"**Bailiff**" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

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

"**Bailiwick body**" means –

- (a) a Guernsey body, being –
  - (i) a Guernsey company,
  - (ii) any other legal person registered, constituted or incorporated in Guernsey (including for the avoidance of doubt a Guernsey limited liability partnership, a Guernsey limited partnership with legal personality and a Guernsey foundation), or
  - (iii) an unincorporated body whose principal place of business is in Guernsey,
- (b) an Alderney body, being –
  - (i) an Alderney company, or

(ii) an unincorporated body whose principal place of business is in Alderney,

(c) a Sark body, being any body, other than one mentioned in paragraph (a)(i) or (ii) or (b)(i), whose principal place of business is in Sark,

**"Banking Supervision Law"** means the Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>aa</sup>,

**"body"** includes a company, any other legal person and an unincorporated body,

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

**"business day"** means any day other than –

(a) a Saturday, a Sunday, Christmas Day and Good Friday,

(b) a day appointed as a public holiday –

(i) in relation to the Bailiwick excluding the islands of Alderney and Sark, by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>bb</sup>,

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<sup>aa</sup> Order in Council No. XXI of 2020.

<sup>bb</sup> Ordres en Conseil Vol. XVII, p. 384; this enactment has been amended.

- (ii) in relation to the island of Alderney, by Ordinance of the States of Alderney under the said section 1(1) or under paragraph (o) of Schedule 2 to the Government of Alderney Law,
- (iii) in relation to the island of Sark, by Ordinance of the Chief Pleas of Sark under the said section 1(1),

"**business regulated by this Law**" means credit business, financial firm business, the business of virtual asset service providers (VASPS) or platform and intermediation business,

"**by way of business**" : see subsection (3),

"**capital base**", in relation to a licensee, means the capital base determined by the Commission after consultation with the licensee; and any such determination may be varied from time to time,

"**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 or partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) 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,

"**child**" includes a stepchild, an adopted child and an illegitimate child,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" shall be construed accordingly,

"**close relative**" of a person means –

- (a) that person's spouse, civil partner or cohabitant,
- (b) that person's children, parents, step-parents, brothers, sisters, half-brothers, half-sisters, step-brothers and step-sisters, and
- (c) the spouse, civil partner or cohabitant of any person within paragraph (b),

"**cohabitant**" : see paragraph (b) of the definition of "**associate**",

"**Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission Law,

the "**Committee**" means the States of Guernsey Policy and Resources Committee or such other committee as the States may specify by Ordinance,

"**committee**" of the States of Guernsey, States of Alderney or Chief Pleas

of Sark means any committee, council, department, authority, board or like body thereof, however called,

"**Companies (A) Law**" means the Companies (Alderney) Law, 1994<sup>cc</sup>,

"**Companies (G) Law**" means the Companies (Guernsey) Law, 2008<sup>dd</sup>,

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

"**compliance officer**" means an officer, appointed by a licensee or by another person or entity, with responsibility, under the terms of the officer's appointment, for independently monitoring, and reporting to the directors, partners (or general partners, in the case of a limited partnership, or members, in the case of a limited liability partnership) or chief executive on and providing guidance and making recommendations in respect of –

- (a) compliance by that licensee, person or entity with –
  - (i) the provisions of this Law and the regulatory Laws,
  - (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such

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<sup>cc</sup> Order in Council No. XXXIV of 1994; this enactment has been amended.

<sup>dd</sup> Order in Council No. VIII of 2008; this enactment has been amended.

provision, and

(iii) its policies and procedures relating to corporate governance, ethics and standards of conduct, and

(b) fulfilment by that licensee, person or entity, or by any person who is or is to be the holder of a supervised role in respect of, or an officer or employee of, that licensee, person or entity, of the applicable minimum criteria for licensing,

"**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,

"**controller**", in relation to a body, means –

(a) a managing director or chief executive of that body or (where that body is a company) of any other company of which that body is a subsidiary,

(b) a shareholder controller or an indirect controller,

(c) any person who has the power, alone or with another, to appoint or remove a director of a board or a member of the committee or other similar governing body of

that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>ee</sup>,

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

**"credit"**, and the provision thereof : see section 4,

**"credit business"** : see section 2(4),

**"Criminal Justice (Proceeds of Crime) Law"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>ff</sup>,

**"crowdfunding platform"** : see section 29,

**"customer"** : see section 7,

**"determined"**, in relation to an appeal, means that the appeal has been finally disposed of or withdrawn,

**"directed person"** : see section 39(1),

**"director"**, in relation to a body, includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also

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<sup>ee</sup> Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

<sup>ff</sup> Ordres en Conseil, Vol. XXXIX, p. 137; this enactment has been amended.

includes the chief executive and any member of the committee or other similar governing body,

"**documents**" includes information stored or recorded in any form (including, without limitation, in electronic form) and –

- (a) in relation to information stored or 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 a form –
  - (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and 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:

Provided always that the Committee may by regulation amend the definition of "**documents**",

"**electronic address**" : see section 80(1)(ii),

"**electronic form**", in relation to the electronic storage or recording of

information or documents, includes storage or recording by means of any form of information storage technology,

**"electronic means"**, in relation to the sending of a document, includes any technology by which the document is –

- (a) sent and received at its destination by means of electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and
- (b) entirely transmitted and received by wire, by radio or by electrical, magnetic, wireless, optical, digital or electromagnetic means:

Provided always that the Committee may by regulation amend the definitions of **"electronic address"**, **"electronic form"** and **"electronic means"**,

**"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,

**"enactment"** includes any Law, Ordinance and subordinate legislation,

**"Enforcement Powers Law"** means the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>gg</sup>,

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<sup>gg</sup> Order in Council No. XVII of 2020; this enactment has been amended.

"**entity**" includes a scheme, trust, structure, arrangement and cell of a protected cell company,

"**equity share capital**" means, in relation to a company limited by shares, 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,

"**exercise**", or "**control the exercise of**" voting power : for the purposes of this Law a person becomes entitled to exercise or control the exercise of voting power where that person, by any means whatsoever –

- (a) becomes entitled to do so as a member of a body, or
- (b) acquires any interest which may entitle that person to be a member of, or otherwise to exercise or control the exercise of voting power of, that body,

"**financial firm business**" : see Part A of Schedule 1,

"**Financial Services Commission Law**" means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>hh</sup>,

"**former licensee**" means a person who –

- (a) does not hold and is not deemed to hold a licence, but

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<sup>hh</sup> Ordres en Conseil Vol. XXX, p. 243; this enactment has been amended.

- (b) has previously held or been deemed to hold a licence,

**"foundation"** means –

- (a) a Guernsey foundation, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and however named),

**"foundation official"** means –

- (a) in relation to a Guernsey foundation, a foundation official within the meaning of the Foundations (Guernsey) Law, 2012<sup>ii</sup>, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

**"functions"** includes duties, powers and privileges,

**"functions"** of the Commission means its general functions and statutory functions within the meaning of the Financial Services Commission Law,

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<sup>ii</sup> Order in Council No. I of 2013; this enactment has been amended.

**"general partner"** means –

- (a) in relation to a Guernsey limited partnership, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>jj</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to those of a general partner described in paragraph (a),

**"Government of Alderney Law"** means the Government of Alderney Law, 2004<sup>kk</sup>,

**"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,

**"group entity"** means a body or entity carrying on business regulated by this Law and which is not a licensee but which is part of a group containing a licensee,

**"Guernsey company"** means a company registered in the Register of Companies within the meaning of section 496 of the Companies (G) Law,

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jj Order in Council No. XII of 1995; this enactment has been amended.

kk Order in Council No. III of 2005; this enactment has been amended.

"**Guernsey foundation**" means a foundation established under the Foundations (Guernsey) Law, 2012<sup>ll</sup>,

"**Guernsey limited liability partnership**" means a limited liability partnership registered under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>mm</sup>,

"**Guernsey limited partnership**" means a limited partnership which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995<sup>nn</sup> (whether with or without legal personality),

"**Handbook**" means the Handbook on Countering Financial Crime and Terrorist Financing, as from time to time revised or re-issued by the Commission,

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

"**holding company**" : see Schedule 5,

"**incidental and other activities**" : see Part C of Schedule 1,

"**indirect controller**", in relation to a body, means a person in accordance with whose directions or instructions –

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<sup>ll</sup> Order in Council No. I of 2013; this enactment has been amended.

<sup>mm</sup> Order in Council No. VI of 2014; this enactment has been amended.

<sup>nn</sup> Order in Council No. XII of 1995; this enactment has been amended.

- (a) any director of that body,
- (b) where that body is a company, any director of any other company of which that body is a subsidiary, or
- (c) any controller of that body,

is accustomed to act, and includes a person who has a holding in that body (or, where that body is a company, in any other company of which that body is a subsidiary) directly or indirectly which makes it possible to exercise significant influence over the management of the body,

**"information"** includes, for the avoidance of doubt, a signature,

**"inspected person"** : see section 54(4),

**"Insurance Business Law"** means the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>oo</sup>,

**"Insurance Managers and Intermediaries Law"** means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>pp</sup>,

**"international agreement"** means –

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<sup>oo</sup> Order in Council No. XXI of 2002; this enactment has been amended.

<sup>pp</sup> Order in Council No. XXII of 2002; this enactment has been amended.

- (a) any convention, treaty, protocol, memorandum or other international instrument, or any provision contained in or arising under it, and
- (b) any EU provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>qq</sup>,

whether or not binding upon the Bailiwick or any part thereof, and includes any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international agreement,

**"investment company"** : see section 79(1) of the Protection of Investors Law,

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

**"leasehold interest"** means any interest in or in respect of real property which confers or vests rights of possession or enjoyment and which, apart from the provisions of an Ordinance under section 2(b) of the Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004<sup>rr</sup>, is treated as or deemed to be personal or movable property under the law of the jurisdiction in which the real property in or in respect of which the interest exists is situated,

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<sup>qq</sup> Ordres en Conseil Vol. XXXV(1), p. 65; this enactment has been amended.

<sup>rr</sup> Order in Council No. X of 2005; this enactment has been amended.

"**legal professional privilege**", and communications or items subject thereto : see section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>ss</sup>,

"**licence**" means a Part II licence, a Part III licence or a Part IV licence,

"**licensed banking institution**" means an institution which is a licensed institution within the meaning of the Banking Supervision Law (that is, an institution which holds or which is deemed to hold a banking licence under that Law),

"**licensed fiduciary**" means a person who is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law (that is, a person who holds a fiduciary licence under that Law),

"**licensee**" means a Part II licensee, a Part III licensee or a Part IV licensee,

"**limited liability partnership**" means –

- (a) a Guernsey limited liability partnership, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a Guernsey limited liability partnership,

"**limited partner**" means –

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<sup>ss</sup> Order in Council No. XXIII of 2003; this enactment has been amended.

- (a) in relation to a Guernsey limited partnership, a limited partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>tt</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person described in paragraph (b)(ii) of that definition,

"**limited partnership**" means –

- (a) a Guernsey limited partnership, or
- (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –
  - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
  - (ii) the others (referred to in this Law as "**limited partners**") have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are

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<sup>tt</sup> Order in Council No. XII of 1995; this enactment has been amended.

not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

**"liquidator"** includes any person conducting a dissolution or winding up and a receiver, administrator and administration manager,

**"member"**, in respect of –

- (a) a Guernsey company, has the same meaning as in the Companies (G) Law,
- (b) an Alderney company, has the same meaning as in the Companies (A) Law, and
- (c) a Guernsey limited liability partnership, has the meaning given by section 114(1) of the Limited Liability Partnerships (Guernsey) Law, 2013<sup>uu</sup>,

**"members of the Commission"** means the members of the Commission (known as Commissioners) elected by the States under the provisions of paragraph 1 of Schedule 1 to the Financial Services Commission Law and for

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<sup>uu</sup> Order in Council No. VI of 2014; this enactment has been amended.

the time being holding office,

**"minimum criteria for licensing"** means the minimum criteria as to integrity and skill, fitness and propriety, and other matters, specified in the provisions of Schedule 4,

**"modifications"** includes additions and deletions,

**"money laundering compliance officer"** means the money laundering compliance officer appointed in accordance with paragraph 15 of Schedule 3 to the Criminal Justice (Proceeds of Crime) Law,

**"money laundering reporting officer"** means the money laundering reporting officer appointed in accordance with paragraph 12 of Schedule 3 to the Criminal Justice (Proceeds of Crime) Law,

**"notified supervised role"** : see section 41(3),

**"NRFBSB Law"** means the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>vv</sup>,

**"officer"**, in relation to a company, includes a director, liquidator, manager and secretary thereof,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey, any officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

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<sup>vv</sup> Order in Council No. XV of 2008; the Law is repealed by this enactment.

1972<sup>ww</sup> and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of their jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney –
  - (i) a member of any police force which may be established by the States of Alderney, and
  - (ii) within the limits of their jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law,
- (c) in relation to Sark –
  - (i) the Constable, an Assistant Constable and the Vingtenier, and
  - (ii) within the limits of their jurisdiction, a special constable appointed under section 54 of the Reform (Sark) Law, 2008<sup>xx</sup>,

**"ordinary members of the Commission"** means the members of the Commission other than the Chairman,

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<sup>ww</sup> Ordres en Conseil Vol. XXIII, p. 573; this enactment has been amended.

<sup>xx</sup> Order in Council No. V of 2008; this enactment has been amended.

**"other supervised manager"** : see section 41(3)(d),

**"Part II licence"** : see section 2(1),

**"Part II licensee"** means a person who holds or who is deemed to hold a Part II licence,

**"Part III FFB licence"** : see section 16(1),

**"Part III licence"** means a Part III FFB licence or a Part III VASP licence,

**"Part III licensee"** means a person who holds or who is deemed to hold a Part III licence,

**"Part III VASP licence"** : see section 17(1),

**"Part IV licence"** : see section 26(1),

**"Part IV licensee"** means a person who holds or who is deemed to hold a Part IV licence,

**"partner"** has the same meaning as in the Partnership (Guernsey) Law, 1995<sup>yy</sup>, and includes a general partner and a limited partner of a limited partnership,

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<sup>yy</sup> Ordres en Conseil Vol. XXXVI, p. 179; this enactment has been amended.

**"partnership"** : see section 1 of the Partnership (Guernsey) Law, 1995<sup>zz</sup>,

**"peer to peer platform"** : see section 28,

**"person"** includes –

- (a) an individual,
- (b) a company,
- (c) any other legal person, and
- (d) an unincorporated body,

**"platform and intermediation business"** : see section 26(4),

**"Policy and Finance Committee of the Chief Pleas of Sark"** : see subsection (2),

**"Policy and Finance Committee of the States of Alderney"** : see subsection (2),

**"property"** includes property of every description (including, for the avoidance of doubt, virtual assets) and any share, right or interest therein,

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of

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<sup>zz</sup> Ordres en Conseil Vol. XXXVI, p. 179; this enactment has been amended.

the Companies (G) Law,

**"Protection of Investors Law"** means the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>aaa</sup>,

the **"provisions of"** this Law or any other enactment include the provisions of –

- (a) any Ordinance or subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under this Law or that other enactment (as the case may be), and
- (b) any subordinate legislation, or any code, guidance, principles, policies or instructions, made or issued under any such Ordinance or subordinate legislation,

(and see also the definition below of the **"purposes of"** this Law or any other enactment),

**"public"** means the public, including any section of the public, however selected, in the Bailiwick or elsewhere, and includes, for the avoidance of doubt and without limitation, customers and clients and potential customers and clients (whether of any person or entity, or of any particular, or any particular class or description of, person or entity) and, in relation to a body, a section consisting of, or consisting of a section of, members, debenture holders, or customers or clients of, in or with that body,

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<sup>aaa</sup> Order in Council No. XVIII of 2020.

the "**purposes of**" this Law or any other enactment include the purposes of all or any of the provisions of this Law or that other enactment, as the case may be (and see also the definition above of the "**provisions of**" this Law or any other enactment),

"**qualifying capital interest**" : see the definition of "**related company**" below,

"**real property**" means land, buildings and other property constituting real or immovable property under the law of the jurisdiction in which it is situated (the *lex situs*), and includes any share, right or interest therein (including, for the avoidance of doubt, any leasehold interest),

"**recovery plan**" means a plan, in such form and containing such information as may be determined by the Commission and as may be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, addressing corrective action necessary in respect of existing or potential regulatory or supervisory concerns from time to time raised by the Commission (including, without limitation, action necessary to demonstrate a return to solvency from insolvency),

"**Registrar of Companies**" means the holder for the time being of the office established under section 495(1) of the Companies (G) Law,

"**regulated advertisement**" : see section 61(5),

"**regulated agreement**" : see section 6,

**"regulated businesses"** : see Part B of Schedule 1,

**"Regulation of Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>bbb</sup>,

**"regulatory Laws"** means –

- (a) the Protection of Investors Law,
- (b) the Regulation of Fiduciaries Law,
- (c) the Banking Supervision Law,
- (d) the Insurance Business Law,
- (e) the Insurance Managers and Intermediaries Law,
- (f) the Enforcement Powers Law,
- (g) the Financial Services Commission Law,
- (h) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008<sup>ccc</sup>,
- (i) any other enactment prescribed for the purposes of this

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<sup>bbb</sup> Order in Council No. XIX of 2020.

<sup>ccc</sup> Order in Council No. XII of 2009; this enactment has been amended.

Law by regulation of the Committee,

"**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 under "**related company**", unless the contrary is

shown, and

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

Provided always that the Committee may by regulation amend the definitions of "**related company**", "**qualifying capital interest**" and "**relevant shares**",

"**relevant document**" : see section 64(p),

"**relevant electronic address**" : see section 80(1)(iii),

"**relevant person**" : see section 52(1),

"**relevant supervisory authority**" means –

- (a) an authority performing in the Bailiwick or any other jurisdiction –
  - (i) functions corresponding to any functions of the Commission, or
  - (ii) such other functions as the Committee may by regulation prescribe,

including functions in respect of the Bailiwick,

- (b) any international organisation, that is to say, any

organisation, community or body –

- (i) of which the United Kingdom or any other sovereign power is a member, or
  - (ii) which is established under any international agreement,
- (c) a self-regulatory organisation, or
- (d) a resolution authority, that is to say, a public authority that, alone or together with other authorities, is responsible, in the Bailiwick or any other jurisdiction, for the resolution of financial institutions established in its jurisdiction (including resolution planning functions),

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, and for the purposes of this Law –

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it,

**"secured"** includes charged, encumbered, mortgaged and hypothecated,

**"self-regulatory organisation"** means an organisation, including a security market and stock exchange, performing in the Bailiwick or any other jurisdiction –

- (a) licensing or other authorisation functions to enable persons to carry on any activities which in that jurisdiction may only lawfully be carried on with the authorisation of the organisation concerned, or
- (b) regulatory or supervisory functions subject to which any activities in that jurisdiction are carried on,

or such other functions as the Committee may by regulation prescribe, and in paragraphs (a) and (b) **"activities"** includes the practising of any profession,

**"servant"** includes a person working under a contract for services and an employee,

**"services ancillary to the provision of credit"** : see section 5,

**"shareholder controller"** –

- (a) in relation to a body, and subject to the provisions of 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 (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 15% or more of the cell shares issued in respect of any cell of that company,

**"significant shareholder"**, in relation to a body (other than a licensed banking institution incorporated in a jurisdiction outside the Bailiwick), 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 (whether in general meeting or otherwise) of that body or (where that body is a company) of any other company of which that body is a subsidiary,

**"skilled persons"** : see section 54(1),

**"special purpose vehicle"** means a body or entity created solely for the purposes of –

- (a) a particular financial transaction or series of financial transactions, or
- (b) the holding and/or lending of assets,

**"States"** means the States of Deliberation,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"subsidiary company"** : see Schedule 5 (and **"subsidiary"** has the same meaning),

**"supervised body"** means –

- (a) a body –
  - (i) which is a licensee within the meaning of the Protection of Investors Law or which is exempt from licensing under section 44 of that Law, or
  - (ii) which holds an authorisation or registration under section 8 of that Law,
- (b) a body which is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law,
- (c) a body which is a licensed institution within the meaning of the Banking Supervision Law,
- (d) a body which is a licensee within the meaning of the Insurance Business Law,
- (e) a body which is a licensee within the meaning of the Insurance Managers and Intermediaries Law,
- (f) a body which is of any other class or description prescribed for the purposes of this Law by regulations

of the Committee,

"**supervised role**" means an approved supervised role, a notified supervised role or a vetted supervised role,

"**transmitted**" : see section 80(1)(iv),

"**trust**" means the legal relationship that exists (by whatever name) where a person (the "**trustee**") holds or has vested in the trustee or is deemed to hold or have vested in the trustee any property which does not form, or which has ceased to form, part of the trustee's own estate –

- (a) for the benefit of another person, whether or not yet ascertained or in existence, or
- (b) for any purpose which is not for the benefit only of the trustee,

and the expression "**trust**" includes a trust and any equivalent or similar structure or arrangement, whether established in or under the laws of the Bailiwick or elsewhere and howsoever named, but for the avoidance of doubt does not include a foundation,

"**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>ddd</sup>,

"**VASPS**" means virtual asset service providers,

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<sup>ddd</sup> Ordres en Conseil Vol. XXXI, p. 278; this enactment has been amended.

"**vettted supervised role**" : see section 41(2), and

"**virtual asset**" : see section 17(4).

(2) Unless the contrary intention appears, references in the provisions of this Law to –

- (a) the Policy and Finance Committee of the States of Alderney, and
- (b) the Policy and Finance 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 the provisions of this Law on those committees.

(3) For the purposes of this Law a person who provides any service or carries on any activity shall (unless the Commission, conditionally or unconditionally, directs otherwise in any particular case or, after consultation with the Committee, in any particular class or description of cases) be deemed to do so "**by way of business**" if that person receives any income, fee, emolument or other consideration in money or money's worth for doing so.

(4) The States may by Ordinance amend this section by adding any definition to it or by removing or varying any definition in it.

(5) Subsection (4) is without prejudice to any other power to enact

Ordinances or subordinate legislation conferred by the provisions of this Law.

**Repeals.**

91. The enactments or provisions of enactments specified in Schedule 2 are repealed as set out in that Schedule.

**Amendments.**

92. The enactments specified in Schedule 3 are amended as set out in that Schedule.

**Savings and transitional provisions.**

93. (1) The Committee may make regulations containing such savings and transitional provision as it thinks fit –

- (a) in connection with the commencement of any of the provisions of this Law, and
- (b) for effecting the transition from the provisions of any enactment repealed by this Law to the provisions of this Law.

(2) Regulations under subsection (1) may, without limitation, make such provision in respect of any provision of this Law, including a provision already in force, as the Committee thinks fit in connection with the commencement of or transition to that provision or any other provision of this Law, whether or not yet in force.

(3) Savings and transitional provisions made under the provisions of this section are in addition to and not in derogation from those made by or under

any other provision of this Law.

**Citation.**

94. This Law may be cited as the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022.

**Commencement.**

95. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

## SCHEDULE 1

Section 16

### PART A

#### FINANCIAL FIRM BUSINESSES

1. (1) The businesses specified in the following paragraphs of this Part of this Schedule are, when carried on by way of business for, with or on behalf of a customer, "**financial firm businesses**" for the purposes of this Law.  
  
(2) However, financial firm businesses are not subject to licensing under the provisions of this Law as financial firm businesses where –
  - (a) they are carried on by a regulated business within the meaning of Part B of this Schedule, or
  - (b) they constitute incidental and other activities within the meaning of Part C of this Schedule.
2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfaiting) 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. Buying, selling or arranging the buying or selling of, or otherwise dealing in,

bullion or buying or selling postage stamps, except where –

- (a) in the case of bullion, the business consists only of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, where the value of each purchase, sale or deal does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,
- (b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and
- (c) in the case of selling postage stamps, the business consists only of selling postage stamps –
  - (i) where the value of each sale does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or
  - (ii) in the course of –
    - (A) a postal services business carried on under the authority of a licence

granted under the Post Office  
(Bailiwick of Guernsey) Law, 2001<sup>eee</sup>,

or

(B) a business authorised to sell postage  
stamps by the holder of a licence under  
that Law.

6. Facilitating or transmitting money or value through an informal money or value transfer system or network.
7. Issuing, redeeming, managing or administering means of payment; and "**means of payment**" includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders, bankers' drafts and electronic money.
8. Providing financial guarantees or commitments.
9. Trading (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

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<sup>eee</sup> Order in Council No. XV of 2001; this enactment has been amended.

negotiable instruments or financial assets.

10. Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).
11. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.
12. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.
13. Money broking.
14. Money changing.
15. Providing individual or collective portfolio management services or advice.
16. Providing safe custody services.
17. Providing services for the safekeeping or administration of cash or liquid securities on behalf of customers or clients.
18. Carrying on the business of a credit union.
19. Accepting repayable funds other than deposits.

20. Otherwise investing, administering or managing funds or money on behalf of other persons.

PART B  
REGULATED BUSINESSES

21. The businesses specified in the following paragraphs of this Part of this Schedule are, for the purposes of this Law, "**regulated businesses**" and are not subject to licensing under the provisions of this Law as financial firm businesses.
22. The carrying on of credit business or any other form of financial firm business by a person who holds a Part II licence under this Law.
23. The carrying on of deposit-taking business within the meaning of the Banking Supervision Law or any other form of financial firm business by a person who holds a banking licence under that Law.
24. The carrying on of –
- (a) controlled investment business within the meaning of the Protection of Investors Law or any other form of financial firm business by a person who holds a licence under that Law, or
  - (b) an authorised or registered collective investment scheme within the meaning of that Law.

25. The carrying on of long term business within the meaning of the Insurance Business Law or any other form of financial firm business by a person who holds a licence in respect of long term business under that Law.
26. The carrying on of business as an insurance intermediary in respect of long term business within the meaning of the Insurance Managers and Intermediaries Law or any other form of financial firm business by a person who holds a licence to carry on business as an insurance intermediary in respect of long term business under that Law.
27. Acting as an insurance manager within the meaning of the Insurance Managers and Intermediaries Law or the carrying on of any other form of financial firm business by a person who holds a licence to act as an insurance manager under that Law.
28. The carrying on of regulated activities within the meaning of the Regulation of Fiduciaries Law, in circumstances where the activities are prohibited except under the authority of and in accordance with the conditions of a fiduciary licence under that Law, or carrying on by way of business the activities described in section 3(1)(g) or (ab) of that Law or any other form of financial firm business, by a person who holds a fiduciary licence under that Law.

## PART C

### INCIDENTAL AND OTHER ACTIVITIES

29. The businesses specified in the following paragraphs of this Part of this Schedule are, for the purposes of this Law, "**incidental and other activities**" and are not subject to licensing under the provisions of this Law as financial firm businesses.

30. Any form of business falling within Part A of this Schedule carried on 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,

and for the purposes of this paragraph business is incidental to the provision of such advice or services if –

- (i) separate remuneration is not being given for the business as well as for such advice or services,
- (ii) such advice or services are not themselves a business falling within Part A of this Schedule, and
- (iii) the business being carried on is incidental to the main purpose for which such advice or services are provided.

31. The carrying on of any form of business falling within Part A of this Schedule –

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business falling within Part A of this Schedule, 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.

**32.** Activities constituting the restricted activities of dealing, advising and promotion for the purposes of Schedule 2 to the Protection of Investors Law provided that –

- (a) such activities are carried on by a person who is not incorporated or registered in the Bailiwick,
- (b) such activities are carried on by a person who does not maintain a physical presence in the Bailiwick,
- (c) such activities are carried on from a country or territory listed in Appendix C to the Handbook,
- (d) the conduct of such activities is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such activities, and
- (e) the conduct of such activities is supervised for

compliance with the requirements referred to in item (d) by a relevant supervisory authority.

33. Any insurance business, within the meaning of the Insurance Business Law, which is –

- (a) carried on by a person who holds a licence under the Insurance Business Law solely to carry on general business within the meaning of that Law,
- (b) carried on by a person who is not incorporated or registered in the Bailiwick,
- (c) carried on by a person who does not maintain a physical presence in the Bailiwick,
- (d) not managed in or from within the Bailiwick, and
- (e) subject to authorisation and supervision by the United Kingdom Financial Conduct Authority.

34. Any form of business falling within paragraph 17, 19 or 20 of Part A of this Schedule carried on in the course of carrying on the business of auditor, external accountant, insolvency practitioner or tax adviser, where the business concerned is registered under Schedule 5 to the Criminal Justice (Proceeds of Crime) Law.

## SCHEDULE 2

Section 91

### REPEALS

The following enactments or provisions of enactments are repealed.

1. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>fff</sup>.
2. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Amendment) Ordinance, 2008<sup>ggg</sup>.
3. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2008<sup>hhh</sup>.
4. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (Schedule 1 Amendment) Regulations, 2010<sup>iii</sup>.
5. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008 (Schedule 1 Amendment) Regulations, 2013<sup>jjj</sup>.

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**fff** Order in Council No. XV of 2008.

**ggg** Ordinance No. XXXII of 2008.

**hhh** G.S.I. No. 75 of 2008.

**iii** G.S.I. No. 17 of 2010.

**jjj** G.S.I. No. 16 of 2013.

6. In the Schedule to the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009<sup>kkk</sup>, the entries relating to the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.
7. Section 4(g) of the Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015<sup>lll</sup>.
8. Section 63(7) of the Single Euro Payments Area (Guernsey) Ordinance, 2016<sup>mmm</sup>.
9. Paragraph 10 of the Second Schedule to the Transfer of Funds (Alderney) Ordinance, 2017<sup>nnn</sup>.
10. Paragraph 10 of the Second Schedule to the Transfer of Funds (Guernsey) Ordinance, 2017<sup>ooo</sup>.
11. Paragraph 10 of the Second Schedule to the Transfer of Funds (Sark) Ordinance, 2017<sup>ppp</sup>.

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**kkk** Order in Council No. XIII of 2010; this enactment has been amended.

**lll** Ordinance No. XII of 2015; this enactment has been amended.

**mmm** Ordinance No. II of 2016; this enactment has been amended.

**nnn** Alderney Ordinance No. III of 2017; this enactment has been amended.

**ooo** Ordinance No. XXVII of 2017; this enactment has been amended.

**ppp** Sark Ordinance No. X of 2017; this enactment has been amended.

12. Regulation 5 of the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2010<sup>qqq</sup>.
13. Regulation 1(6) of the Financial Services Commission (Regulatory Laws) (Bailiwick of Guernsey) (Amendment) Regulations, 2017<sup>rrr</sup>.
14. Paragraph 2(6) of Schedule 4 to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>sss</sup>.

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<sup>qqq</sup> G.S.I. No. 83 of 2010.

<sup>rrr</sup> G.S.I. No. 50 of 2017.

<sup>sss</sup> Order in Council No. VI of 2017; this enactment has been amended.

SCHEDULE 3

Section 92

AMENDMENTS

**Amendment of Enforcement Powers Law.**

1. (1) The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>ttt</sup> is amended as follows.

(2) After section 2(b)(iii) insert the following subparagraph –

"(iiia) the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (**"the Lending, Credit and Finance Law"**)".

(3) After section 4(c) insert the following paragraph –

"(ca) a licensee within the meaning of the Lending, Credit and Finance Law (that is, a person who is a Part II licensee, a Part III licensee or a Part IV licensee under that Law), respectively referred to in this Law as an LCF Part II licensee, an LCF Part III licensee and an LCF Part IV licensee,".

(4) In section 8(5)(c) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit

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<sup>ttt</sup> Order in Council No. XVII of 2020.

and Finance Law,".

(5) In section 9(1) –

(a) for "section 1(4) of the Protection of Investors Law" substitute "section 1(4), 5 or 9 of the Protection of Investors Law",

(b) after "section 1 or 8 of the Regulation of Fiduciaries Law," insert "section 2, 14, 16, 17, 24, 26 or 35 of the Lending, Credit and Finance Law,".

(6) In section 12(1)(a) after "section 26 of the Regulation of Fiduciaries Law," insert "section 53 of the Lending, Credit and Finance Law,".

(7) In section 12(3) –

(a) for "section 1(4) of the Protection of Investors Law" substitute "section 1(4), 5 or 9 of the Protection of Investors Law",

(b) after "section 1 or 8 of the Regulation of Fiduciaries Law," insert "section 2, 14, 16, 17, 24, 26 or 35 of the Lending, Credit and Finance Law,".

(8) In section 13(3)(d)(i) –

(a) for "section 1(4) of the Protection of Investors Law" substitute "section 1(4), 5 or 9 of the Protection of

Investors Law",

(b) after "section 1 or 8 of the Regulation of Fiduciaries Law," insert "section 2, 14, 16, 17, 24, 26 or 35 of the Lending, Credit and Finance Law,".

(9) In section 14(1) after "section 26 of the Regulation of Fiduciaries Law," insert "section 53 of the Lending, Credit and Finance Law,".

(10) In section 14(2) after "section 26 of the Regulation of Fiduciaries Law," insert "section 53 of the Lending, Credit and Finance Law,".

(11) In section 14(4) after "section 26 of the Regulation of Fiduciaries Law," insert "section 53 of the Lending, Credit and Finance Law,".

(12) In section 20(j)(ii) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(13) After section 20(n)(iv) insert the following subparagraph –

"(iva) section 70 of the Lending, Credit and Finance Law,".

(14) Section 42(6)(b) is repealed.

(15) After section 54(2)(d) insert the following paragraph –

"(e) credit, loan or platform (in relation to, for the

purposes of subsection (1)(b), licensees within the meaning of the Lending, Credit and Finance Law).".

(16) In section 109(1)(d) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(17) Section 121(2)(b) is repealed.

(18) In Schedule 1, in the definition of "**customers**", after "clients (within the meaning of the Regulation of Fiduciaries Law)" insert ", customers and clients (within the meaning of the Lending, Credit and Finance Law),".

(19) In Schedule 1, insert the following definitions at the appropriate places –

""**credit business**" : see section 2(4) of the Lending, Credit and Finance Law,"

""**financial firm business**" : see Part A of Schedule 1 to the Lending, Credit and Finance Law,"

""**LCF Part II licensee**" means a person who is a Part II licensee within the meaning of the Lending, Credit and Finance Law (that is, a person who holds or who is deemed to hold a Part II licence under that Law),"

""**LCF Part III licensee**" means a person who is a Part III licensee

within the meaning of the Lending, Credit and Finance Law (that is, a person who holds or who is deemed to hold a Part III licence under that Law),",

""**LCF Part IV licensee**" means a person who is a Part IV licensee within the meaning of the Lending, Credit and Finance Law (that is, a person who holds or who is deemed to hold a Part IV licence under that Law),",

""**Lending, Credit and Finance Law**" means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,",

""**Part II licence**" : see section 2(1) of the Lending, Credit and Finance Law,",

""**Part III licence**" : see sections 16(1) and 17(1) of the Lending, Credit and Finance Law,",

""**Part IV licence**" : see section 26(1) of the Lending, Credit and Finance Law,",

""**platform and intermediation business**" : see section 26(4) of the Lending, Credit and Finance Law,",

""**virtual asset service providers ("VASPS")**" and the business thereof : see section 17 of the Lending, Credit and Finance Law,".

(20) In Schedule 1, in the definition of "**licence**", after paragraph (c) insert the following paragraph –

"(ca) a licence within the meaning of the Lending, Credit and Finance Law,".

(21) In Schedule 1, in the definition of "**minimum criteria for licensing**", after paragraph (c) insert the following paragraph –

"(ca) Schedule 4 to the Lending, Credit and Finance Law,".

(22) In Schedule 1, in the definition of "**prescribed Laws**" –

(a) paragraph (f) is repealed, and

(b) after paragraph (l) insert the following paragraph –

"(la) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,".

### **Amendment of Banking Supervision Law.**

2. (1) The Banking Supervision (Bailiwick of Guernsey) Law, 2020<sup>uuu</sup> is amended as follows.

(2) After section 5(8) insert –

"(8A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change

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<sup>uuu</sup> Order in Council No. XXI of 2020.

to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a banking licence."

(3) In section 15(3)(b) for "depositors, investors or customers of or in" substitute "depositors or potential depositors of".

(4) In section 25(4) after "oral" insert ", written or electronic".

(5) In section 28(6)(b)(ii)(A) for "subsection (11)" substitute "subsection (10)".

(6) After section 29(3)(b) insert the following word and paragraph –

"and

(c) may, for the avoidance of doubt, be an officer or servant of the Commission."

(7) In section 29(4) –

(a) paragraphs (b), (c), (d), (f) and (g) are repealed,

(b) in paragraph (e) for "paragraph (a), (b) or (d)" substitute "paragraph (a)", and

(c) for paragraph (h) substitute the following paragraph –

"(h) a person who performs any function for or on behalf of –

(i) a licensed institution, or

(ii) a person acting for or on behalf of a licensed institution,

in relation to deposit-taking business, including, without limitation, a person who is an auditor of a licensed institution, or".

(8) Section 29(5) is repealed.

(9) In section 29(6), the sentence "This subsection does not apply to a former licensed institution." is repealed.

(10) In section 29(9)(c) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(11) In section 33 the second subsection (5) is renumbered as subsection "(6)".

(12) For section 38(m)(iv) substitute –

"(iv) depositors, investors and customers and potential depositors, investors and customers (including those of persons described in subparagraphs (i) to (iii)),".

(13) In section 45(j)(ii) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(14) After section 45(n)(iii) insert the following subparagraph –

"(iiia) section 70 of the Lending, Credit and Finance Law,".

(15) In section 66(1) –

(a) in paragraphs (a) and (b) of the definition of "**close relative**" for "his" substitute "that person's",

(b) after the definition of "**legal professional privilege**" insert the following definitions –

""**Lending, Credit and Finance Law**" means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,"

""**licensed fiduciary**" means a person who is a licensed fiduciary within the meaning of the Regulation of Fiduciaries Law (that is, a

person who holds a fiduciary licence under that Law),",

(c) in the definition of "**regulatory Laws**" –

(i) after paragraph (b) insert the following paragraph –

"(ba) the Lending, Credit and Finance Law,"

(ii) paragraph (f) is repealed,

(d) in the definition of "**supervised body**" after paragraph (b) insert the following paragraph –

"(ba) a body which is a licensee within the meaning of the Lending, Credit and Finance Law,".

(16) In Schedule 2 –

(a) paragraph 1(1) is renumbered as paragraph 1,

(b) paragraph 1(2) is renumbered as paragraph 2 and given the heading "**Compliance with rules, codes, guidance, etc.**", and

(c) in paragraph 3(2)(j) for "paragraph 1(2)" substitute "paragraph 2".

**Amendment of Regulation of Fiduciaries Law.**

3. (1) The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020<sup>vvv</sup> is amended as follows.

(2) After section 5(9) insert –

"(9A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a fiduciary licence."

(3) In section 15(3)(b) after "clients" insert "or potential clients".

(4) In section 26(6)(b)(ii)(A) for "subsection (11)" substitute "subsection (10)".

(5) After section 27(3)(b) insert the following word and paragraph –

"and

(c) may, for the avoidance of doubt, be an officer or servant of the Commission."

(6) In section 27(4) –

(a) paragraphs (b), (c), (d), (f) and (g) are repealed,

(b) in paragraph (e) for "paragraph (a), (b) or (d)" substitute "paragraph (a)", and

(c) for paragraph (h) substitute the following paragraph –

"(h) a person who performs any function for or on behalf of –

(i) a licensed fiduciary, or

(ii) a person acting for or on behalf of a licensed fiduciary,

in relation to regulated activities, including, without limitation, a person who is an auditor of a licensed fiduciary, or".

(7) Section 27(5) is repealed.

(8) In section 27(6), the sentence "This subsection does not apply to a former licensed fiduciary." is repealed.

(9) In section 27(9)(c) after "section 5(5) of the Banking Supervision Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(10) For section 35(m)(iv) substitute –

"(iv) clients and potential clients (including clients and potential clients of persons described in subparagraphs (i) to (iii), and".

(11) In section 39(j)(ii) after "section 5(5) of the Banking Supervision Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(12) After section 39(n)(iii) insert the following paragraph –

"(iiia) section 70 of the Lending, Credit and Finance Law,".

(13) In section 59(1) –

(a) in paragraphs (a) and (b) of the definition of "close relative" for "his" substitute "that person's",

(b) after the definition of "**legal professional privilege**" insert the following definition –

""**Lending, Credit and Finance Law**" means the Lending, Credit

and Finance (Bailiwick of Guernsey) Law, 2022,"

- (c) in the definition of "**regulatory Laws**" –
  - (i) after paragraph (b) insert the following paragraph –

"(ba) the Lending, Credit and Finance Law,"
  - (ii) paragraph (f) is repealed,
- (d) in the definition of "**supervised body**" after paragraph (c) insert the following paragraph –

"(ca) a body which is a licensee within the meaning of the Lending, Credit and Finance Law,".

**Amendment of Protection of Investors Law.**

4. (1) The Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>www</sup> is amended as follows.

(2) After section 3(6) insert –

"(6A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (whether by virtue of the

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<sup>www</sup> Order in Council No. XVIII of 2020.

information becoming out of date, or being found to be incomplete or inaccurate, or otherwise), the applicant shall inform the Commission of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of a licence."

(3) After section 8(7) insert –

"(7A) If, whether before or after the granting of an application under this section, there is any change of fact or circumstance, or any change to any of the information supplied to the Commission by or on behalf of the applicant for the purposes of the application (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 of the change as soon as practicable after becoming aware of the change and in any event within a period of 14 days thereafter (or such other period as the Commission may determine), and a failure to do so is, without prejudice to the generality of any other provision of this Law or the Enforcement Powers Law, a ground for the refusal or revocation of an authorisation or registration under this section."

(4) In section 26(1) after "oral" insert ", written or electronic".

(5) In section 33(6)(b)(ii)(A) for "subsection (11)" substitute "subsection (10)".

(6) After section 38(3)(b) insert the following word and paragraph

-

"and

- (c) may, for the avoidance of doubt, be an officer or servant of the Commission."

(7) In section 38(4) –

- (a) paragraphs (c), (d), (e), (f), (h) and (i) are repealed,
- (b) in paragraph (g) for "paragraph (a), (b), (c) or (f)" substitute "paragraph (a) or (b)", and
- (c) for paragraph (j) substitute the following paragraph –

"(j) a person who performs any function for or on behalf of –

- (i) a licensee or an authorised or registered collective investment scheme, or
- (ii) a person acting for or on behalf of a licensee or an authorised or registered collective investment scheme,

in relation to controlled investment business, including, without limitation, a person who is

an auditor of a licensee or an authorised or registered collective investment scheme, or".

(8) Section 38(5) is repealed.

(9) In section 38(6), the sentence "This subsection does not apply to a former licensee or former authorised or registered collective investment scheme." is repealed.

(10) In section 38(9)(c) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(11) In section 40(3)(b) after "investors or clients" insert "or potential investors or clients".

(12) In section 44(1)(c)(iii) for "that person's law" substitute "the law of that jurisdiction".

(13) In section 49(j)(ii) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(14) After section 49(n)(iii) insert the following paragraph –

"(iiia) section 70 of the Lending, Credit and Finance Law,".

(15) In section 69(4) in the definition of "**customers**" after "the

Banking Supervision Law)," insert "customers and clients (within the meaning of the Lending, Credit and Finance Law),".

(16) In section 79(1) –

(a) after the definition of "**legal professional privilege**" insert the following definition –

**"Lending, Credit and Finance Law"** means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,"

(b) in the definition of "**regulatory Laws**" –

(i) after paragraph (b) insert the following paragraph –

"(ba) the Lending, Credit and Finance Law,"

(ii) paragraph (f) is repealed.

#### **Amendment of Insurance Business Law.**

5. (1) The Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>xxx</sup> is amended as follows.

(2) After section 68A(3)(b) insert the following word and paragraph –

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<sup>xxx</sup> Order in Council No. XXI of 2002; this enactment has been amended.

"and

- (c) may, for the avoidance of doubt, be an officer or servant of the Commission."

(3) In section 68A(4) –

- (a) paragraphs (b), (c), (d), (f) and (g) are repealed,
- (b) in paragraph (e) for "paragraph (a), (b) or (d)" substitute "paragraph (a)", and
- (c) for paragraph (h) substitute the following paragraph –

"(h) a person who performs any function for or on behalf of –

- (i) a licensed insurer, or
- (ii) a person acting for or on behalf of a licensed insurer,

in relation to insurance business, including, without limitation, a person who is an auditor of a licensed insurer, or".

(4) Section 68A(5) is repealed.

(5) In section 68A(6), the sentence "This subsection does not apply to a former licensed insurer." is repealed.

(6) In section 68A(9)(c) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(7) In section 80(j)(ii) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(8) After section 80(n)(iv) insert the following paragraph –

"(iva) section 70 of the Lending, Credit and Finance Law,".

(9) In Schedule 5 –

(a) after the definition of "**legal professional privilege**" insert the following definition –

"**Lending, Credit and Finance Law**" means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,".

(b) in the definition of "**regulatory Laws**" –

(i) after paragraph (d) insert the following paragraph –

"(da) the Lending, Credit and Finance Law,"

(ii) paragraph (f) is repealed.

**Amendment of Insurance Managers and Intermediaries Law.**

6. (1) The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>yyy</sup> is amended as follows.

(2) After section 45A(3)(b) insert the following word and paragraph

–

"and

(c) may, for the avoidance of doubt, be an officer or servant of the Commission."

(3) In section 45A(4) –

(a) paragraphs (b), (c), (d), (f) and (g) are repealed,

(b) in paragraph (e) for "paragraph (a), (b) or (d)" substitute "paragraph (a)", and

(c) for paragraph (h) substitute the following paragraph –

"(h) a person who performs any function for or on

behalf of –

- (i) a licensee, or
- (ii) a person acting for or on behalf of a licensee,

in relation to business regulated by this Law, including, without limitation, a person who is an auditor of a licensee, or".

(4) Section 45A(5) is repealed.

(5) In section 45A(6), the sentence "This subsection does not apply to a former licensee." is repealed.

(6) In section 45A(9)(c) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(7) In section 57(j)(ii) after "section 5(6)(a) of the Regulation of Fiduciaries Law," insert "section 12(5)(a), 22(5)(a) or 33(5)(a) of the Lending, Credit and Finance Law,".

(8) After section 57(n)(iv) insert the following subparagraph –

"(iva) section 70 of the Lending, Credit and Finance Law,".

- (9) In Schedule 3 –
- (a) the definition of "close relative" is repealed,
  - (b) after the definition of "**legal professional privilege**" insert the following definition –  
  
"**Lending, Credit and Finance Law**" means the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,"
  - (c) in the definition of "**regulatory Laws**" –
    - (i) after paragraph (d) insert the following paragraph –  
  
"(da) the Lending, Credit and Finance Law,"
    - (ii) paragraph (f) is repealed.

**Amendment of Financial Services Commission Law.**

7. (1) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>zzz</sup> is amended as follows.

(2) In section 24(1) for the definition of "**regulatory Laws**" substitute the following definition –

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<sup>zzz</sup> Ordres en Conseil Vol. XXX, p. 243; this enactment has been amended.

""regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 2020,
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 2020,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (f) the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,
- (g) the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,
- (h) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,
- (i) any other enactment prescribed for the

purposes of this Law by regulation of the Commission,".

**Amendment of Financial Services Ombudsman Law.**

8. (1) The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014<sup>aaaa</sup> is amended as follows.

(2) After section 9(1)(a)(v) insert the following word and subparagraph –

"or

(vi) the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022,".

(3) Section 9(1)(e) is repealed.

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<sup>aaaa</sup> Order in Council No. I of 2015; this enactment has been amended.

## SCHEDULE 4

Section 13(2)

### MINIMUM CRITERIA FOR LICENSING

#### **Integrity and skill.**

1. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on –

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of the activities of the applicant or licensee, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting business, the applicant or licensee shall at all times act in accordance with the following documents issued by the Commission –

- (a) the Principles of Conduct of Finance Business, and
- (b) any rules, codes, guidance, principles, policies and instructions issued under the provisions of this Law and any other enactment as may be applicable to the applicant or licensee.

#### **Fit and proper persons.**

2. (1) The applicant or licensee is a fit and proper person to hold a

licence and every person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee is a fit and proper person to hold that position.

(2) In determining whether a person ("A") is a fit and proper person to hold a licence or a particular position, regard shall be had to –

- (a) A's probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a licensee or (as the case may be) of that position,
- (b) the diligence with which A is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of the public or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by A holding a licence or that position,
- (d) A's educational and professional qualifications, A's membership of professional or other relevant bodies and any evidence of A's continuing professional education or development,
- (e) A's knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) A's policies, procedures and controls for the vetting of customers and clients and A's record of compliance with the provisions of –

- (i) the appointed Laws,
- (ii) the Single Euro Payments Area (Guernsey) Ordinance, 2016,
- (iii) the Transfer of Funds (Guernsey) Ordinance, 2017<sup>bbbb</sup>, the Transfer of Funds (Alderney) Ordinance, 2017<sup>cccc</sup> and the Transfer of Funds (Sark) Ordinance, 2017<sup>dddd</sup>,
- (iv) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>eeee</sup>,
- (v) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017<sup>ffff</sup>,
- (vi) any legislation implementing European Union or United Nations sanctions and applicable in the Bailiwick, and

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**bbbb** Ordinance No. XXVII of 2017; this enactment has been amended.

**cccc** Alderney Ordinance No. III of 2017; this enactment has been amended.

**dddd** Sark Ordinance No. X of 2017; this enactment has been amended.

**eeee** Order in Council No. VI of 2017; this enactment has been amended.

**ffff** Order in Council No. VII of 2017; this enactment has been amended.

- (vii) any other enactment prescribed for the purposes of this Law by regulation of the Commission,
- (g) A's record of compliance with the provisions of the Companies (G) Law in acting as a corporate services provider or a resident agent within the meaning of that Law,
- (h) A's record of compliance with the provisions of the Foundations (Guernsey) Law, 2012~~gggg~~ in acting as a foundation official or a resident agent within the meaning of that Law,
- (i) A's record of compliance with the provisions of the Limited Liability Partnerships (Guernsey) Law, 2013~~hhhh~~ in acting as a corporate services provider or a resident agent within the meaning of that Law, and
- (j) A's policies, procedures and controls to comply with any rules, codes, guidance, principles, policies and instructions referenced under paragraph 1(2).

(3) Without prejudice to the generality of subparagraphs (1) and (2), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that that person has –

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~~gggg~~ Order in Council No. I of 2013; this enactment has been amended.

~~hhhh~~ Order in Council No. VI of 2014; this enactment has been amended.

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any of the provisions of –
  - (i) this Law,
  - (ii) the regulatory Laws,
  - (iii) the NRFSB Law,
  - (iv) the repealed regulatory legislation (within the meaning of the Enforcement Powers Law),
  - (v) any enactment relating to money laundering or terrorist financing (including, for the avoidance of doubt, any rules, codes, guidance, principles, policies and instructions issued by the Commission in relation thereto), or
  - (vi) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to –
    - (A) dishonesty, incompetence or malpractice by persons concerned in

the provision of business regulated by this Law, regulated activities (within the meaning of the Regulation of Fiduciaries Law), banking, insurance, investment or other financial services, or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons in respect of whom there has been a winding up event within the meaning of the Enforcement Powers Law),

(c) engaged in any business practices (whether unlawful or not) –

(i) appearing to the Commission to be deceitful or oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on that person's method of conducting business or that person's suitability to carry on business regulated by this Law, or

(d) engaged in or been associated with any other business practices or other conduct or behaviour in such a way as to cast doubt on that person's competence and

soundness of judgement.

(4) For the purposes of this paragraph and for the avoidance of doubt –

- (a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,
- (b) "**enactment**" includes any primary, secondary or tertiary legislation of any jurisdiction in the British Islands or elsewhere, and
- (c) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick.

**Business to be directed by at least two individuals.**

3. (1) At least two individuals who are –

- (a) of appropriate standing and experience, and
- (b) sufficiently independent of each other,

shall effectively direct the business of the applicant or licensee.

(2) For the purposes of subparagraph (1)(c), an individual is sufficiently independent of another where, in the opinion of the Commission, that individual would not be unduly influenced by that other individual.

(3) This paragraph does not apply in respect of an applicant or licensee who is an individual.

**Composition of board of directors.**

4. Where the applicant or licensee is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of its business, and
- (b) directors without executive responsibility for the management of its business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

**Business to be conducted in prudent manner.**

5. (1) The applicant or licensee conducts or, in the case of a person who is not yet carrying on business regulated by this Law, will conduct business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to the provisions of subparagraph (4), an applicant or licensee ("A") shall not be regarded as conducting its business in a prudent manner unless –

- (a) A maintains or, as the case may be, will maintain –
  - (i) a capital base, and

(ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) A maintains or, as the case may be, will maintain adequate liquidity, having regard to –

(i) the relationship between A's liquid assets and A's actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and A's assets will mature,

(iii) the nature and scale of A's operations,

(iv) the risks inherent in those operations and (where A is a company) in the operations of any other company in the same group so far as capable of affecting A, and

(v) any other factors appearing to the Commission to be relevant,

(c) A makes or, as the case may be, will make adequate provision for –

(i) depreciation or diminution in the value of A's

assets (including provision for bad or doubtful debts),

(ii) liabilities which will or may fall to be discharged by A, and

(iii) losses which A will or may incur, and

(d) A maintains or, as the case may be, will maintain –

(i) adequate accounting and other records of A's business, and

(ii) adequate systems of control of A's business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), the Commission shall also have regard, in determining whether an applicant or licensee is to be regarded as conducting business in a prudent manner, to the following –

(a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,

(b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by the applicant or licensee for the proper maintenance and

development of such systems,

(c) the complaints history of the applicant or licensee, and

(d) where the applicant or licensee is a company which is part of a group, whether the structure or organisation of the group hinders effective supervision.

(4) For the purposes of –

(a) subparagraph (2)(a), an appropriate amount is –

(i) an amount commensurate with the nature and scale of A's operations, and

(ii) an amount and nature sufficient to safeguard the interests of A's customers and clients and potential customers and clients, having regard to –

(A) the nature and scale of A's operations,

(B) the risks inherent in those operations and (where A is a company) in the operations of any other company in the same group, so far as capable of affecting A, and

(C) any other factors appearing to the

Commission to be relevant,

- (b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensee, the Commission may, to such extent as it thinks appropriate, take into account –
  - (i) the assets of the applicant or licensee, and
  - (ii) the facilities which are available to the applicant or licensee and which are capable of providing liquidity within a reasonable period, and
- (c) subparagraph (2)(d) –
  - (i) records and systems shall not be regarded as adequate unless they are such as to enable –
    - (A) the business of the applicant or licensee to be managed prudently, and
    - (B) the applicant or licensee to comply with the duties imposed by or under the provisions of this Law or any enactment listed in paragraph 2(2)(f), and
  - (ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without

limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

**Information required by the Commission.**

6. The applicant, licensee and any person who is, or is to be, the holder of a supervised role in respect of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing compliance with the minimum criteria for licensing set out in this Schedule.

**Power to make regulations.**

7. The Committee may make regulations amending the provisions of this Schedule.

SCHEDULE 5

Section 90(1)

MEANING OF "HOLDING COMPANY" AND  
"SUBSIDIARY COMPANY"

1. For the purposes of 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 a 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 that person's favour by that other company

of such a power,

- (b) that a person's appointment thereto follows necessarily from that person's 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 items (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 item (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 this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

**Power to make regulations.**

5. The Committee may make regulations amending the provisions of this Schedule.