

**The Preferred Debts (Insurance Policyholders)**  
**(Bailiwick of Guernsey)**  
**(Amendment) Ordinance, 2023**

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on the States by section 9A of the Preferred Debts (Guernsey) Law, 1983<sup>a</sup>, section 85 of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and section 121 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>c</sup>, and on the Committee by Article 66A of the Reform (Guernsey) Law, 1948<sup>d</sup>, and all other powers respectively enabling the States and the Committee in that behalf, hereby orders:-

*Amendment of Preferred Debts Law 1983*

**Amendment of Preferred Debts Law.**

1. The Preferred Debts (Guernsey) Law, 1983 is further amended as follows.
  
2. In section 1(1) of that Law –
  - (a) at the end of paragraph (b), delete the word "and", and

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<sup>a</sup> Ordres en Conseil Vol. XXVIII, p. 184; this enactment has been amended.

<sup>b</sup> Order in Council No. XXI of 2002; this enactment has been amended.

<sup>c</sup> Order in Council No. XVII of 2021; this enactment has been amended.

<sup>d</sup> Ordres en Conseil Vol. XIII, p. 288; this enactment has been amended.

(b) after paragraph (c), insert the following paragraph –

"and (d) in the case of a licensed insurer, in priority to all other debts other than debts to which paragraph (za), (a) or (b) relates, and without prejudice to the provisions of sections 40 to 43A of the Insurance Business Law (special requirements in respect of insurers with long term business), any amount representing a preferred insurance debt of that insurer including, for the avoidance of doubt, a preferred insurance debt in respect of long term business where the assets representing the fund maintained by the insurer under section 42(1) of that Law or any part of that fund are insufficient to meet the liabilities of the insurer attributable to the long term business carried on by the insurer or, as the case may be, attributable to any part of that business."

3. After section 1(1) of that Law insert the following subsection -

"(1A) The provisions of subsection (1)(d) do not apply in respect of the winding up of a licensed insurer in which a liquidator has been appointed before the 25<sup>th</sup> April, 2023 (the date of commencement of the Preferred Debts (Insurance Policyholders) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023)."

4. In section 1(2) of that Law for "the last preceding subsection" substitute "subsection (1)".

5. For section 1(4) of that Law substitute the following subsection -

"(4) Without prejudice to the order of priority set out in subsection (1), the debts to which paragraphs (b), (c) and (d) of that subsection respectively relate shall in each case rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions."

6. In section 9(1) of that Law, insert the following definitions at the appropriate places -

""**Bailiwick body**" has the meaning given by the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,"

""**company**", in the case of a licensed insurer, means -

- (a) a body mentioned in paragraphs (a) to (e) of section 71 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, or
- (b) an unincorporated Bailiwick body within the meaning of that Law,"

""**contract of insurance**" has the meaning given by the Insurance Business Law,"

""**general business**" has the meaning given by the Insurance Business Law,"

""**Insurance Business Law**" means the Insurance Business (Bailiwick of Guernsey) Law, 2002,"

""**licensed insurer**" has the meaning given by the Insurance Business Law,"

""**liquidator**" has the meaning given by the Insurance Business Law,"

""**long term business**" has the meaning given by the Insurance Business Law,"

""**policyholder**" has the meaning given by the Insurance Business Law,"

""**preferred insurance debt**" means a debt to which a licensed insurer (not being a category 5 insurer within the meaning of the Insurance Business (Solvency) Rules, 2021) is, or may become, liable, pursuant to a contract of insurance, to a policyholder or any person who has a direct right of action against that insurer by virtue of a contract of insurance, and includes any premium paid in connection with a contract of insurance (whether or not that contract was concluded), which the insurer is liable to refund,

Provided always that the States of Guernsey Policy and Resources Committee may by regulation amend the definition of "preferred insurance debt" for the purposes of this Law,"

""**winding up**" includes dissolution."

*Amendment of Insurance Business Law, 2002*

**Amendment of Insurance Business Law.**

7. In the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>e</sup> after section 43 (and before the cross heading immediately below that section) insert the following section -

**"Priority for policyholders on dissolution or winding up of licensed insurer.**

43A. (1) The provisions of the Preferred Debts (Guernsey) Law, 1983 in respect of -

- (a) the dissolution or winding up of a licensed insurer which is -
  - (i) a body mentioned in paragraphs (a) to (e) of section 71 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, or
  - (ii) an unincorporated Bailiwick body (within the meaning of that Law), and
- (b) the preferred insurance debts (within the meaning of the said Preferred Debts Law) of such a licensed insurer,

are in addition to and not in derogation from -

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<sup>e</sup> Order in Council No. XXI of 2002; this enactment has been amended.

- (A) the provisions of sections 40 to 43, and
- (B) the provisions of this Law and the Companies (Guernsey) Law, 2008 in respect of protected cell companies and the attribution of the assets and liabilities thereof.

(2) For the avoidance of doubt, where on the winding up or dissolution of a licensed insurer which is insolvent the assets representing the fund maintained by the insurer under section 42(1) or, as the case may be, representing any part of that fund, exceed or, as the case may be, are less than the liabilities of the insurer attributable to the long term business carried on by the insurer or, as the case may be, attributable to any part of that business, then -

- (a) where the assets exceed the liabilities, the surplus shall be available in respect of other debts of the insurer in accordance with the provisions of the Preferred Debts (Guernsey) Law, 1983, and
- (b) where the assets are less than the liabilities, the creditors to whom preferred insurance debts are owed in respect of the insurer's long term business may, for the purposes of the settlement of those debts, have resort to the other assets of the insurer to the same extent and with the same priority as the creditors to whom preferred insurance debts are owed in respect of the insurer's general business."

*Amendment of Financial Services Business (Enforcement Powers) Law, 2020*

**Amendment of Enforcement Powers Law.**

8. In section 71 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020<sup>f</sup> -

(a) for "77" substitute "77A", and

(b) after "section 75" insert "and section 77A".

9. After section 77 of that Law (and before the cross heading immediately below that section) insert the following section –

**"Priority for policyholders on dissolution or winding up of licensed insurer.**

77A. The provisions of the Preferred Debts (Guernsey) Law, 1983 have effect throughout the Bailiwick in respect of -

(a) the dissolution or winding up of a licensed insurer which is –

(i) a body mentioned in paragraphs (a) to (e) of section 71, or

(ii) an unincorporated Bailiwick body, and

(b) the preferred insurance debts (within the meaning

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<sup>f</sup> Order in Council No. XVII of 2021; this enactment has been amended.

of that Law) of such a licensed insurer."

*General provisions*

**Extent.**

10. (1) Sections 1 to 6 of this Ordinance have effect in the Islands of Guernsey, Herm, Jethou and Alderney.

(2) Sections 7 to 12 of this Ordinance have effect throughout the Bailiwick of Guernsey.

**Citation.**

11. This Ordinance may be cited as the Preferred Debts (Insurance Policyholders) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

**Commencement.**

12. This Ordinance shall come into force on the 25<sup>th</sup> April, 2023.