



Jersey

L.9/2003

INSURANCE BUSINESS (AMENDMENT No. 4) (JERSEY) LAW 2003

A **LAW** to amend further the Insurance Business (Jersey) Law 1996.

<i>Adopted by the States</i>	<i>23rd October 2002</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>27th February 2003</i>
<i>Registered by the Royal Court</i>	<i>21st March 2003</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1

In this Law “principal Law” means the Insurance Business (Jersey) Law 1996,¹ as amended.²

2

After Article 4(2) of the principal Law³ there shall be inserted the following paragraph -

“(2A) The carrying on of insurance business in or from within the Island includes obtaining or seeking to obtain such business from a person incorporated, registered or resident in the Island by means of a contract or other arrangement with another person where -

- (a) the sole or principal purpose of such contract or other arrangement is the obtaining of or seeking to obtain such business; and
- (b) that other person gives effect to the contract or other arrangement in or from within the Island.”.

3

In Article 6 of the principal Law⁴ -

- (a) after paragraph(4)(a) there shall be inserted the following sub-paragraph -

“(aa) having regard to the information before the Commission as to the -

- (i) integrity, competence, financial standing, structure and organisation of the applicant;
- (ii) persons employed by or associated with the applicant for the purposes of his business or any shareholder controller of the business; and
- (iii) description of the business which the applicant proposes to carry on,

the Commission is not satisfied that the applicant is a fit and proper person to be a permit holder;”;

- (b) for paragraph (12) there shall be substituted the following paragraphs -

“(12) A person who fails to comply with a condition imposed under this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

(13) An offence under paragraph (12) may be charged by reference to a day or any longer period of time and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.”.

4

For Article 18(3) of the principal Law⁵ there shall be substituted the following paragraphs -

“(3) A permit holder who fails to comply with any provision of this Article shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.⁶

(4) An offence under paragraph (3) may be charged by reference to a day or any longer period of time and a permit holder may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction for such an offence.”.

5

For paragraphs (10) to (13) of Article 22⁷ there shall be substituted the following paragraphs -

“(10) A permit holder who -

- (a) fails to give notice in accordance with paragraph (1); or

(b) fails to comply with the requirements of a notice under paragraph (5),
shall be guilty of an offence.

(11) A person who -

- (a) becomes a director, chief executive or shareholder controller; or
- (b) continues to be a director, chief executive or shareholder controller,

in relation to a permit holder, following service on him of a notice of objection under paragraph (6) or (7) in that connection, shall be guilty of an offence.

(12) A person guilty of an offence under paragraph (10) or (11) shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

(13) An offence under paragraph (10) or paragraph (11)(b) may be charged by reference to a day or any longer period of time and a permit holder may be convicted of a second or subsequent offence under either paragraph by reference to any period of time following the preceding conviction for such an offence.”.

6

In Article 24 of the principal Law⁸ -

(a) after paragraph (3) there shall be inserted the following paragraph -

“(3A) A person appointed under paragraph (1) shall have such duties and responsibilities as may be prescribed and where such person contravenes or fails to comply with any Order made under this paragraph, the Commission may require the permit holder to terminate his appointment within such period as the Commission may specify.”;

(b) after paragraph (4) there shall be inserted the following paragraph -

“(4A) The Commission may require the permit holder to cause the person appointed under paragraph (1) to take such action as the Commission may specify within such period as the Commission may specify.”; and

(c) for paragraph (5) there shall be substituted the following paragraph -

“(5) If a permit holder fails to comply with a requirement specified in paragraph (3A), (4)(b) or (4A) within the relevant time period he shall not effect any contract which constitutes long term business until he has complied with it.”.

7

In Article 26 of the principal Law⁹ for the words “long term business” there shall be substituted the words “insurance business” and in the heading to that Article for the words “long-term business” there shall be substituted the words “insurance business”.

8

For Article 33(7) of the principal Law¹⁰ there shall be substituted the following paragraph -

- “(7) For the purposes of this Article an advertisement for insurance issued outside the Island shall be treated as issued in the Island if it is directed to persons in the Island or is made available to them otherwise than in a publication, broadcast or other means of communication that is principally directed or made available to persons outside the Island.”.

9

In Part IV of the principal Law, before Article 38¹¹ there shall be inserted the following Article -

“37A Insurance contracts effected in contravention of Article 4

- (1) Subject to paragraph (3), a contract of insurance entered into by a person in the course of carrying on insurance business in contravention of Article 4 shall be unenforceable against the other party and that party shall be entitled to recover any money or other property paid or transferred by him under the contract, together with compensation for the loss sustained by him as a result of having parted with it.
- (2) The compensation recoverable under paragraph (1) shall be such as the parties may agree or as a court may, on the application of either party, determine.
- (3) A court may allow a contract to which paragraph (1) applies to be enforced or money or property paid or transferred under it to be retained if it is satisfied -
 - (a) that the person carrying on insurance business reasonably believed that his entering into the contract did not constitute a contravention of Article 4; and
 - (b) that it is just and equitable for the contract to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform a contract which by virtue of this Article is unenforceable against him or by virtue of this Article recovers money or property paid or transferred under a contract, he shall not be entitled to any benefits under the contract and shall

repay any money and return any other property received by him under the contract.

- (5) Where any property transferred under a contract to which this Article applies has passed to a third party the references to that property in this Article shall be construed as references to its value at the time of its transfer under the contract.
- (6) A contravention of Article 4 shall not make a contract of insurance illegal or invalid to any greater extent than is provided in this Article; and a contravention of that Article in respect of a contract of insurance shall not affect the validity of any re-insurance contract entered into in respect of that contract.”.

10

In the Second Schedule to the principal Law¹² -

- (a) in paragraph 1 for the words “long term business carried on in the Island” there shall be substituted the words “insurance business carried on in or from within the Island”;
- (b) in paragraph 4(b)(ii) the words “long term” shall be deleted; and
- (c) in paragraph 7 for the words “long term business of the class or classes” there shall be substituted the word “the insurance business”.

11

This Law may be cited as the Insurance Business (Amendment No. 4) (Jersey) Law 2003 and shall come into force on the seventh day following its registration.

C.M. NEWCOMBE

Greffier of the States.

¹ Volume 1996-1997, page 81.

² Volume 1996-1997, page 552, Volume 1998, pages 274 and 427, Volume 1999, pages 420 and 526, Volume 2000, page 701 and Volume 2001, page 113.

³ Volume 1996-1997, page 89.

⁴ Volume 1996-1997, page 92 and Volume 1998, pages 276 and 428.

⁵ Volume 1996-1997, page 109.

⁶ Volume 1992-1993, page 437.

⁷ Volume 1996-1997, page 113.

⁸ Volume 1996-1997, page 116 and Volume 1998, page 276.

⁹ Volume 1996-1997, page 118.

¹⁰ Volume 1996-1997, page 124.

¹¹ Volume 1996-1997, page 128, Volume 1998, page 277 and Volume 1999, page 526.

¹² Volume 1996-1997, page 142 and Volume 1998, page 432.