

**Jersey Law 12/1996**

**INSURANCE BUSINESS (JERSEY) LAW 1996**

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**A LAW** to make new provision for the authorisation and supervision of insurance businesses, and generally to provide for purposes connected therewith and incidental thereto, sanctioned by Order of Her Majesty in Council of the

**24th day of APRIL 1996**

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*(Registered on the 24th day of May 1999)*

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**STATES OF JERSEY**

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The 21st day of November 1995

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

*PART I*

PRELIMINARY

ARTICLE 1

**Interpretation**

- (1) In this Law, unless the context otherwise requires –
- “associate”, in relation to a person, means –
- (a) the person’s husband, wife, child or stepchild;

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- (b) his partner;
- (c) any company of which he is a director;
- (d) where the person is a company, any director or employee of the company, any subsidiary of the company, and any director or employee of such a subsidiary; and
- (e) where the permit holder concerned is a company, any person with whom the person in question has an agreement or arrangement to act together in exercising voting power in relation to the permit holder;

“Category A permit” and “Category B Permit” have the meanings respectively given to them in paragraph (2) of Article 4;

“chief executive”, in relation to a permit holder, means an employee of the permit holder who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of its insurance business;

“Committee” means the Finance and Economics Committee;

“company” means a body corporate wherever incorporated;

“Court” means the Royal Court;

“general business” means business which falls into a class set out in Part II of the First Schedule;

“holding company” has the meaning given in Article 2 of the Companies (Jersey) Law 1991;<sup>1</sup>

“insurance” includes reinsurance;

<sup>1</sup> Volume 1990–1991, page 890.

“insurance company” means a company carrying on insurance business;

“long-term business” means business which falls into a class set out in Part I of the First Schedule;

“long-term business fund” has the meaning given in paragraph (2) of Article 25;

“member State” has the meaning given in the European Communities (Jersey) Law 1973;<sup>2</sup>

“permit” means a permit granted under this Law;

“permit holder” means a person to whom a permit has been granted under paragraph (1) of Article 6;

“prescribed” means prescribed by Order;

“relevant supervisory authority”, in relation to a country or territory outside the Island, means the authority discharging in that country or territory functions corresponding to those of the Committee under this Law;

“shareholder controller”, in relation to a permit holder, means a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of not less than 15% of the voting power in general meeting of the permit holder or of any company of which it is a subsidiary;

“subsidiary” has the meaning given in Article 2 of the Companies (Jersey) Law 1991.<sup>3</sup>

(2) Where in this Law there is a reference to an Article or Schedule by number only, and without further identification, such reference shall be construed as a reference to the Article or Schedule of that number contained in this Law.

<sup>2</sup> Volume 1973–1974, page 98.

<sup>3</sup> Volume 1990–1991, page 890.

(3) Where in any Article, Schedule or other division of this Law there is a reference to a Part, paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the Part, paragraph, sub-paragraph or clause of that number or letter contained in the Article, Schedule or other division of this Law in which such reference occurs.

(4) Unless the context otherwise requires, where this Law refers to any enactment, and in this paragraph “enactment” includes an enactment of the United Kingdom, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

## ARTICLE 2

### **Amendment of definitions**

(1) The States may by Regulations amend any of the definitions, and any ancillary provisions, in Article 1 or in the First or Second Schedule, for the purposes of giving effect to this Law or to any part of it.

(2) Regulations under this Article may contain different provisions for different descriptions of persons, or of businesses.

(3) Regulations under this Article may contain such transitional provisions as appear to the States to be necessary or expedient for the purposes of the Regulations, and may exclude or modify the effect of the Regulations on any other enactment which is expressed to have effect in relation to insurance business to which Article 4 applies.

## ARTICLE 3

**Functions of the Committee**

(1) The Committee shall have the powers conferred on it by this Law and the duty generally to supervise the persons given permits in the exercise of those powers.

(2) Neither the States, nor the Committee nor any person who is a member of the Committee, or who is acting as an officer, servant or agent of the Committee or performing any duty on behalf of the Committee, shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Committee under this Law or any Regulations or Order made or purportedly made, under this Law, unless it is shown that the act or omission was in bad faith.

*PART II*AUTHORISATION AND SUPERVISION OF INSURANCE  
BUSINESS

## ARTICLE 4

**Prohibition of carrying on insurance business unless authorised**

(1) This Article applies to long-term business and general business.

(2) Subject to the provisions of this Law, no person shall carry on in or from within the Island insurance business to which this Article applies unless that person is authorised by a permit granted under Article 6 (to be known as a “Category A permit” in the case of a permit holder which is granted a permit by virtue of its authorisation by or under the law of a jurisdiction outside the Island and a “Category B permit” in the case of any other permit holder) to carry on business of the description in question.



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(3) Any person who carries on business in contravention of the provisions of this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or a fine, or both.

(4) Subject to paragraph (5), paragraphs (1) and (2) shall not apply to –

- (a) insurance business (other than industrial insurance business) carried on –
  - (i) by the association of underwriters known as Lloyd's;  
or
  - (ii) by a trade union or employers' association where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits;
- (b) general business of such of the classes specified in Part II of the First Schedule as may be prescribed, if it is carried on solely in the course of carrying on, and for the purpose of, banking business;
- (c) general business consisting in the effecting and carrying out, by an insurance company that carries on no other insurance business, of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind;
- (d) insurance business which is carried on under authority of an enactment other than this Law or the Companies (Jersey) Law 1991;<sup>4</sup>
- (e) any other person or institution which the Committee may from time to time prescribe (subject always to such conditions or restrictions as the Committee may think fit to prescribe);

<sup>4</sup> Volume 1990–1991, page 875, and Volume 1992–1993, page 63.

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- (f) any other class of persons which the Committee may from time to time prescribe.

(5) Sub-paragraph (e) of paragraph (4) shall apply only in respect of the carrying on by such persons or class of persons of such insurance business as may be prescribed in relation to such persons or class of persons.

(6) Subject to this Law, a company incorporated under the Companies (Jersey) Law 1991 shall not carry on insurance business in or from within a country or territory outside the Island unless it is the holder of a Category B permit.

(7) Nothing in this Law shall derogate from the provisions of the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948.<sup>5</sup>

(8) In this Article –

- (a) “general business” and “industrial assurance business” have the same meanings as in the First Schedule;
- (b) “trade union” and “employers’ association” have the meanings assigned to them by sections 1 and 122 respectively of the Trade Union and Labour Relations (Consolidation) Act 1992 (1992 c.52).

## ARTICLE 5

### **Application for permit**

(1) An application for a Category A or Category B permit shall –

- (i) be in the form required from time to time by the Committee;

<sup>5</sup> Tome VII, page 483, Volume 1979–1981, page 381, Volume 1988–1989, pages 243 and 411, and Volume 1992–1993, page 279.

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- (ii) contain or be accompanied by such particulars as the Committee may require;
- (iii) be verified in such manner and to such extent as the Committee may require; and
- (iv) be accompanied by the prescribed fee.

(2) Permits shall be renewed annually on such date as the Committee may prescribe, by payment by the permit holder to the Committee of such fee as may be prescribed.

## ARTICLE 6

### **Grant or refusal of permit, imposition of conditions and cancellation of permit**

(1) On an application under Article 5, subject to paragraphs (2) and (3), the Committee may grant a permit to a person (referred to in this Law as “the applicant”), either unconditionally or subject to such conditions as it considers appropriate, or may refuse to grant a permit in accordance with paragraph (4).

(2) The Committee may grant a Category A permit if, and only if –

- (a) the applicant is authorised by or under the law of a jurisdiction outside the Island to carry on business of the description in question in that jurisdiction;
- (b) such business would be lawfully carried on if it were carried on in that jurisdiction; and
- (c) the applicant has provided the Committee with confirmation from the relevant supervisory authority which satisfies it that the insurance business of any branch, office, employee or agent of the applicant situated in the Island is subject to its supervision.

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(3) The Committee may grant a Category B permit in any other case.

(4) The Committee may refuse to grant a permit on one or more of the following grounds –

- (a) the applicant has failed to provide information required under Article 5 or has failed at any time to provide the Committee with such information as it may reasonably require;
- (b) it appears to the Committee that any circumstances exist which are likely to –
  - (i) lead to improper conduct of business by the applicant or by any other person employed by or associated with him for the purposes of his business; or
  - (ii) reflect discredit on the method of conducting business of the applicant or such another person;
- (c) without prejudice to the generality of sub-paragraph (b), it appears to the Committee that, by reason of the applicant or such another person as is referred to in that sub-paragraph having been convicted –
  - (i) of an offence involving dishonesty in any part of the British Islands or in another place in relation to which there is, or was at the time of the conviction, an arrangement with the Island for the extradition of offenders; or
  - (ii) of an offence against this Law or any Order made under it,

the applicant is not a fit and proper person to be a permit holder;

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- (d) it appears to the Committee that it is not desirable that the applicant should have a permit –
  - (i) in the best interests of persons who may transact insurance business with the applicant;
  - (ii) in the interests of protecting the reputation of the Island in financial and commercial matters; and
  - (iii) in the best economic interests of the Island;
- (e) without prejudice to clause (ii) of sub-paragraph (c), the applicant has provided the Committee with information which is untrue or misleading in any material particular in connection with any application under Article 5;
- (f) in the case of a Category A permit, the Committee is not satisfied as to the adequacy of the supervision by the supervisory authority in the jurisdiction outside the Island in which the applicant is authorised to carry on business in terms of sub-paragraph (a) of paragraph (2); or
- (g) the Committee has reason to believe that there has been a failure on the part of the applicant to follow guidance contained in a code of practice issued under Article 39.

(5) The Committee may from time to time vary any condition attached to the grant of a permit or attach a new condition.

(6) Without prejudice to the generality of the provisions of paragraph (5), the Committee may attach to a permit a condition prohibiting the holder of the permit from effecting –

- (a) any contract of insurance; or
- (b) any contract of insurance of a specified class of insurance business to which Article 4 applies;

after such condition is attached to a permit.

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(7) Subject to the provisions of this Law, a condition attached to a permit under paragraph (6) shall not prevent the holder of the permit from carrying out contracts of insurance effected before such condition was attached to the permit.

(8) The Committee may prescribe conditions applicable to all permits or to all Category A permits or to all Category B permits or to any other class or category of permit holder which may be prescribed.

(9) The Committee may cancel a permit on any of the grounds set out in paragraph (4) (with the substitution for references to the applicant of references to the holder of the permit) or –

- (a) if the holder of the permit has not commenced insurance business in or from within the Island within one year of the date of grant of the permit; or
- (b) if the holder of the permit ceases to carry on insurance business in or from within the Island; or
- (c) at the request of the holder of the permit; or
- (d) where the Committee has attached to a permit a condition of the kind referred to in sub-paragraph (a) of paragraph (6).

(10) Where the Committee acting under any of paragraphs (1) to (6) refuses a permit, varies a condition attached to a permit or attaches a condition to a permit or acting under paragraph (9) cancels a permit, it shall give notice in writing thereof to the holder of the permit.

(11) Conditions attaching to a permit by virtue of this paragraph shall apply to a former permit holder as they apply to a permit holder.

(12) If any person fails to comply with any condition imposed under this Article, he shall for each such contravention be liable to imprisonment for a term not exceeding two years or a fine, or both, and a fine for each day on which the offence has continued.

## ARTICLE 7

**Procedure and right of appeal on refusal or cancellation of permit, etc.**

(1) Where the Committee refuses the grant of a permit or cancels a permit or attaches any condition to the grant of a permit or varies any such condition the applicant or the holder of the permit, as the case may be, may require the Committee to furnish to him a statement in writing of its reasons for that decision.

(2) Any person aggrieved by such refusal or cancellation, or by the conditions attached to his permit or by any variation of such conditions may, within one month of the notification to him of the refusal or cancellation of a permit or the imposition of or varying of conditions attaching to a permit, as the case may be, appeal to the Inferior Number of the Royal Court, either in term or in vacation, on the ground that the decision of the Committee was unreasonable having regard to all the circumstances of the case, and the decision of the Inferior Number of the Royal Court shall be final and without further appeal, but without prejudice to the right of the Inferior Number to refer the matter to the Superior Number of the Royal Court.

## ARTICLE 8

**Applications to Court by the Committee**

(1) If on the application of the Committee the Court is satisfied that it is desirable in the interest of persons who have transacted or who may transact insurance business with the applicant or permit holder, as the case may be, that Article 7 shall not have effect or shall cease to have effect in any particular case, the Court may so order.

(2) An order under paragraph (1) may be made without notice to and without hearing any applicant or permit holder, as the case may be.

## ARTICLE 9

**Power to obtain information and require production of documents**

(1) The Committee may by notice in writing served on a permit holder –

- (a) require a permit holder to provide to the Committee, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Committee may reasonably require for the performance of its functions under this Law;
- (b) require a permit holder to provide the Committee with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Committee has required or could require information under sub-paragraph (a).

(2) The accountant or other person appointed by a permit holder to make a report under sub-paragraph (b) of paragraph (1) shall be a person nominated or approved by the Committee; and the Committee may require his report to be in such form as is specified in the notice.

(3) Subject to paragraph (10), the Committee may –

- (a) by notice in writing served on a permit holder require it to produce, at such time and place as the Committee may specify, such document or documents as it may specify; or
- (b) authorise a person or agent of the Committee, on producing (if required to do so) evidence of his authority, to require a permit holder to produce to him forthwith any information or documents which that person may specify.

(4) Where by virtue of paragraph (3) the Committee or a person authorised by it has power to require the production of any information or documents from any permit holder, the Committee or that person shall have the like power to require production of such



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information or documents from any person who appears to the Committee or that person to be in possession of them, but where any person from whom such production is required claims a lien on information or documents produced by him, the production shall be without prejudice to the lien.

(5) Any power conferred by or by virtue of paragraphs (3) and (4) to require a permit holder or other person to produce information or documents shall include power –

- (a) if the information or documents are produced –
  - (i) to take copies of them or extracts from them; and
  - (ii) to require that person, or any other person who is a present or past director or auditor of, or is or was at any time employed by, the company in question, to provide an explanation of any of them;
- (b) if the information or documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this Article may be used in evidence against him.

(7) In this Article “information or documents” includes accounts, deeds, writings and documents.

(8) Subject to the provisions of paragraph (9), any person who makes default in complying with, or with a requirement imposed under, this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine not exceeding level 4 on the standard scale,<sup>6</sup> or both, and to a fine for each day on which the offence has continued.

<sup>6</sup> Volume 1992–1993, page 437.

(9) Where a person is charged with an offence in respect of his default in complying with a requirement imposed under paragraph (3) or (4) to produce any information or documents it shall be a defence to prove that they were not in his possession or control and that it was not reasonably practicable for him to comply with the requirement.

(10) References in paragraphs (3) to (5) to a permit holder include references to any person who appears to the Committee to be acting in contravention of the provisions of paragraph (2) or (6) of Article 4.

(11) A person shall not under paragraph (3) or (4) be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court, except that a lawyer may be required to furnish the name and address of his client.

(12) In this Article reference to a permit holder includes reference to a former permit holder.

## ARTICLE 10

### **Investigations on behalf of the Committee**

(1) If it appears to the Committee desirable to do so in the interests of persons transacting insurance business with a permit holder, the Committee may apply to the Court for the appointment of one or more competent persons to investigate and report to the Committee –

- (a) the nature, conduct or state of the permit holder's insurance business or any particular aspect of it; or
- (b) the integrity, competence, financial standing or organization of the permit holder.

(2) An application under paragraph (1) may be heard in camera, and the Court may make such order, including such ancillary orders, as it thinks just.

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(3) It shall be the duty of every person who is or was an employee, banker, auditor or legal adviser (subject to paragraph (9)) of a permit holder who is under investigation under paragraph (1) –

- (a) to produce to the persons appointed under paragraph (1), within such time and at such place as they may require, all documents relating to the permit holder which are in his custody or power;
- (b) to attend before them at such time and place as they may require; and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and the persons appointed under paragraph (1) may take copies of or extracts from any documents produced to them under sub-paragraph (a).

(4) This Article shall apply in respect of a former permit holder as it applies to a permit holder and to any person who appears to the Committee to be acting in contravention of the provisions of paragraph (2) or (6) of Article 4.

(5) For the purpose of exercising his power under this Article a person appointed under paragraph (1) may enter any premises occupied by a permit holder being investigated by him under this Article, but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this Article would be removed, tampered with or destroyed.

(6) A person exercising powers by virtue of an appointment under this Article shall, if so required, produce evidence of his authority.

- (7) Any person who –
  - (a) without reasonable excuse fails to produce any documents which it is his duty to produce under paragraph (3);

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- (b) without reasonable excuse fails to attend before the persons appointed under paragraph (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a registered person under investigation; or
- (d) intentionally obstructs a person in the exercise of the rights conferred by paragraph (5),

shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine not exceeding level 4 on the standard scale, or both.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this Article may be used in evidence against him.

(9) A person shall not under this Article be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court, except that a lawyer may be required to furnish the name and address of his client.

(10) Where any person by whom documents are required to be provided under paragraph (3) claims a lien on any such document, the production shall be without prejudice to the lien.

## ARTICLE 11

### **Investigation of suspected contraventions**

(1) Where the Committee has reasonable grounds for suspecting that a person is guilty of contravening paragraph (2) or (6) of Article 4 the Committee or any duly authorised officer or agent of the Committee may, by notice in writing served on that or on any other person appearing to be in possession of the information or documents described in this paragraph, require him to do any of the following –

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- (a) to provide to it forthwith or at such time as may be specified, information specified in the notice;
- (b) to produce, forthwith or at such time as may be specified, and at a specified place, specified documents, or documents of a specified description;

being information or, as the case may be, documents which the Committee reasonably requires for the purpose of investigating the suspected contravention;

- (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether the suspected contravention has occurred.

(2) The Committee or a duly authorised officer or agent of the Committee may take copies of or extracts from any documents produced under this Article.

(3) Any person who fails to comply with a requirement imposed on him under this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine not exceeding level 4 on the standard scale, or both.

(4) A statement made by a person in compliance with a requirement imposed by virtue of this Article may be used in evidence against him.

(5) A person shall not under this Article be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Court, except that a lawyer may be required to furnish the name and address of his client.

(6) Where any person by whom documents are required to be provided under paragraph (1) claims a lien on any such document, the production shall be without prejudice to the lien.

## ARTICLE 12

**Entry and search of premises**

(1) The Bailiff may issue a warrant under this Article if satisfied by information on oath that there are reasonable grounds for believing that there are on any premises documents whose production has been required under Article 9 or Article 11 and which have not been produced in compliance with the requirement.

(2) The Bailiff may also issue a warrant under this Article in relation to the requirement for the production of documents under Article 9 if satisfied by information on oath that there are reasonable grounds for believing that if a notice requiring production of documents under Article 9 were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) The Bailiff may also issue a warrant under this Article in relation to the requirement for the production of documents under Article 11 if satisfied by information on oath –

- (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed;
- (b) that the Committee or, as the case may be, the authorised person or agent has power to require the production of the documents under Article 11; and
- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(4) A warrant under this Article shall authorise any police officer, together with any other person named in it to –

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- (a) enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) search the premises and take possession of any documents appearing to be such documents as are mentioned in paragraph (1), (2) or (3), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) take copies of any such documents; and
- (d) require any person named in the warrant to provide an explanation of them or to state where they may be found.

(5) If in the case of a warrant under paragraph (3) the Bailiff is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in paragraph (4) to be taken in relation to such documents.

(6) A warrant under this Article shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(7) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this Article or fails to comply with a requirement imposed on him by virtue of sub-paragraph (d) of paragraph (4) shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

(8) A person shall not under this Article be required to produce any document which he would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the Court, except that a lawyer may be required to furnish the name and address of his client.

(9) Where any person from whose premises documents are taken under paragraph (4) claims a lien on any such document, the

possession of such documents by the officer concerned and by anyone to whom he passes them shall be without prejudice to the lien.

### ARTICLE 13

#### **Obstruction of investigations**

(1) A person who knows or suspects that an investigation is being or is likely to be carried out under Article 10 or 11 shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding two years or a fine, or both.

### ARTICLE 14

#### **Misleading statements, etc. inducing persons to enter into contracts of insurance**

(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into any contract of insurance with an insurance company or to exercise, or refrain from exercising, any rights conferred by such a contract shall be guilty of an offence and liable to imprisonment for a term not exceeding ten years or a fine, or both.

(2) A permit holder shall be guilty of an offence if he fails to provide the Committee with any information in his possession knowing or having reasonable cause to believe –



- (a) that the information is relevant to the exercise by the Committee of its functions under this Law in relation to the permit holder; and
  - (b) that the withholding of the information is likely to result in the Committee being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the permit holder.
- (3) A permit holder guilty of an offence under paragraph (2) shall be liable to imprisonment for a term not exceeding two years or to a fine, or both.
- (4) In paragraphs (2) and (3) a reference to a permit holder includes a reference to a former permit holder.

## ARTICLE 15

### **Accounting records, and duty to prepare annual financial statements**

- (1) Every permit holder shall keep accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the permit holder at that time and enable the permit holder to prepare annual financial statements in accordance with paragraph (2) and (3).
- (2) Every permit holder shall, for each of its financial periods, prepare financial statements which shall consist of –
- (a) a balance sheet as at the last day of its financial period;
  - (b) a profit and loss account for its financial period.
- (3) The balance sheet shall give a true and fair view of the state of affairs of the permit holder as at the last day of its financial period and the profit and loss account shall give a true and fair view of the profit and loss of the permit holder for the period to which it relates.

(4) The Committee may, if it thinks fit, waive any of the requirements of this Article in the case of any class of permit holders or in the case of a particular permit holder.

(5) A permit holder who contravenes this Article commits an offence and is liable to imprisonment for a term not exceeding six months or a fine, or both.

## ARTICLE 16

### **Appointment and qualifications of auditors**

(1) Subject to paragraph (2), every permit holder shall have auditors holding office for the purposes of this Law throughout the period during which it holds a permit under this Law, except for any reasonable period elapsing between the termination of the office of one auditor and the appointment of another.

(2) The Committee may, if it thinks fit, waive any of the requirements of this Article in the case of any class of permit holders or in the case of a particular permit holder.

(3) An auditor for the purposes of this Law shall be a person who is qualified in terms of Article 113 of the Companies (Jersey) Law 1991<sup>7</sup> to be appointed as auditor of a company under Article 109 of that Law.

(4) An auditor of a permit holder who resigns or is removed before the expiration of his term of office, or who is not reappointed on the expiration of that term, shall, within fourteen days of receiving notice of the termination of his office as auditor, send to the Committee –

- (a) a statement to the effect that there are no circumstances connected with his ceasing to be auditor which he considers should be brought to the attention of the Committee; or

<sup>7</sup> Volume 1990–1991, pages 978 and 982.

(b) a report of any such circumstances.

(5) If a person ceasing to hold office as an auditor fails to comply with paragraph (4), he shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.<sup>8</sup>

## ARTICLE 17

### **Auditors Report**

(1) A permit holder shall submit its financial statements for the period to its auditor for audit and shall obtain an auditor's report thereon which shall comply with the requirements set out in paragraphs (2) to (5).

(2) The auditor's report shall be addressed to the Committee and shall state whether or not the financial statements of the permit holder have been audited in accordance with approved auditing standards.

(3) The auditor's report shall also state whether in the opinion of the auditor the financial statements of the permit holder give a true and fair view –

- (a) in the case of the balance sheet, of the state of affairs of the permit holder at the end of the permit holder's financial period; and
  - (b) in the case of the profit and loss account, of the permit holder's profit or loss for the period to which that account relates; and
- (4) If the auditors are of opinion that –
- (a) the permit holder has not, throughout the financial period, kept accounting records in accordance with Article 15;

<sup>8</sup> Volume 1992–1993, page 437.

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- (b) the balance sheet and the profit and loss account are not in agreement with the permit holder's accounting records and returns; or
- (c) he has not obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit,

the auditor shall state that fact in his report.

(5) The Committee may by notice in writing and subject to such terms and conditions as may be expressed in the notice, waive the requirements of this Article in the case of any permit holder named in the notice.

## ARTICLE 18

### **Submission of auditor's report, etc. to the Committee**

(1) A Category A permit holder shall submit its financial statements for the period together with the auditor's report to the Committee within six months after the end of the financial year to which the annual financial statements relate.

(2) A Category B permit holder shall submit its financial statements for the period together with the auditor's report to the Committee within three months after the end of the financial year to which the annual financial statements relate.

(3) A permit holder who contravenes this Article commits an offence and is liable to a fine not exceeding level 4 on the standard scale, and to a fine not exceeding level 1 on the standard scale<sup>9</sup> for each day on which the offence has continued.

<sup>9</sup> Volume 1992–1993, page 437.

## ARTICLE 19

**Powers and duties of auditors**

- (1) The auditor shall have –
  - (a) a right of access at all reasonable times to the accounting and other records of the permit holder or former permit holder and all other documents relating to its business; and
  - (b) a right to require from the permit holder or former permit holder such information and explanations as he thinks necessary for the performance of his duties as auditor.

(2) The auditor shall, in preparing his report for the Committee under Article 17, carry out such enquiries and procedures as will enable him to form an opinion on the matters required to be stated in his report.

(3) Any person who is a director, chief executive or shareholder controller in relation to a permit holder or former permit holder shall be guilty of an offence if he knowingly or recklessly makes a statement to the auditors of the permit holder or former permit holder which is false or misleading in a material particular or which falsely or misleadingly conveys or purports to convey any material information which the auditors are entitled to require in the course of their duties under this Law and which would affect what the auditor would have otherwise stated in his report.

(4) A person who commits an offence under paragraph (3) is liable to imprisonment for a term not exceeding two years or a fine, or both.

## ARTICLE 20

**Communication by auditor with the Committee**

(1) No duty to which an auditor may be subject shall be regarded as contravened by reason of his communicating in good faith to

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the Committee, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Committee under this Law.

(2) This Article applies to a matter of which an auditor becomes aware in his capacity as such and which relates to the business or affairs of the permit holder or former permit holder, as the case may be, or any holding company or subsidiary company in relation to it.

(3) The Committee may, after consultation with such bodies as appear to the Committee to represent the interests of accountants, permit holders and insurers, prescribe circumstances in which an auditor shall be required to communicate any information or opinion to the Committee on a matter to which this Article applies, and which is relevant to any functions of the Committee under this Law.

(4) In this Article, “auditor” means an auditor of a permit holder or former permit holder.

## ARTICLE 21

### **List of permit holders**

(1) The Committee shall keep a register of persons to whom permits have been granted under this Law.

(2) The register referred to in paragraph (1) shall be in such form and contain such particulars as the Committee may from time to time determine.

(3) The register referred to in paragraph (1) shall be kept in such place as the Committee may determine, and any person shall be permitted to inspect the register during ordinary office hours, and to take copies of any entry therein.

## ARTICLE 22

**Approval of directors, etc. in relation to Category B permit holders**

(1) Subject to paragraph (2), a permit holder to which this Article applies shall, before the end of the period of fourteen days beginning with the day on which it becomes aware that any person has become or is about to become, or has ceased to be a director, chief executive or shareholder controller in relation to it give written notice to the Committee of that fact.

(2) This Article applies to a Category B permit holder.

(3) Sub-paragraphs (i) to (iv) of paragraph (1) of Article 5 shall apply to a notice under paragraph (1) as they apply to an application for a permit.

(4) A notice under paragraph (1) that a person has ceased to be a director, chief executive or shareholder controller in relation to a permit holder shall include a statement of the reasons for the change.

(5) Following receipt of a notice under paragraph (1), the Committee may, by giving written notice, require the permit holder to provide such additional information or documents as the Committee may require, by such date as the Committee may reasonably require, in order to decide whether to serve a notice of objection under paragraph (6).

(6) Where it appears to the Committee at any time that, on the information before it (and having regard particularly to the criteria for refusal of an application set out in paragraph (4) of Article 6), a person in respect of whom a notice has been given under paragraph (1) that he has become or is about to become a director, chief executive or shareholder controller in relation to a permit holder is not a fit and proper person to be such, the Committee shall serve on that person and on the permit holder a written notice of objection, directing that the person in question shall not be or, as the case may be, shall not become such a director, chief executive or shareholder controller in relation to the permit holder.

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(7) Where there is a failure to give notice under paragraph (1) or a failure to comply with a notice under paragraph (5), the Committee may serve on the person in respect of whom notice should have been given or a notice should have been complied with, as the case may be, and on the permit holder, a written notice of objection, directing that the person in question shall not be or, as the case may be, shall not become such a director, chief executive or shareholder controller in relation to the permit holder.

(8) A notice of objection under paragraph (6) shall specify the reasons for which it appears to the Committee that the person in question is not fit and proper, but the Committee shall not be required to include in its reasons for objection any confidential information the disclosure of which would, in the Committee's opinion, be prejudicial to a third party.

(9) Any person aggrieved by a notice served on him under this Article may appeal to the Court, either in term or in vacation, within one month from the date on which such notice was given, on the ground that the decision of the Committee is unreasonable having regard to all the circumstances of the case, but this paragraph shall not apply to a permit holder in any case in which it has failed to give a notice required to be given by paragraph (1) within the period specified in that paragraph.

(10) A permit holder which fails to give a notice required by paragraph (1) or fails to comply with the requirements of a notice under paragraph (5) shall be guilty of an offence.

(11) A permit holder who commits an offence under paragraph (10) is liable to a fine not exceeding level 4 on the standard scale.

(12) Any 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.

(13) A person who commits an offence under paragraph (10) or (11) is liable to imprisonment for a term not exceeding two years or a fine, or both and to a fine not exceeding level 3 on the standard scale<sup>10</sup> for each day on which the offence has continued.

## ARTICLE 23

### **Solvency margins**

(1) Every Category B permit holder shall maintain a margin of solvency of such amount as may be prescribed by or determined under, and in accordance with such provisions as may be contained in Orders made by the Committee for the purposes of this Article.

(2) Orders under paragraph (1) may make provision for different margins for long term and for general business, and for the purpose of paragraph (3) a permit holder's margin of solvency shall be the aggregate of the margins applicable to him.

(3) A permit holder shall notify the Committee if the margin of solvency prescribed for it is not at any time maintained.

(4) If the margin of solvency of a permit holder falls below such amount as is prescribed or determined for the purposes of paragraph (1), the Committee may give notice to him, requiring him to submit a short term financial scheme for the purpose of remedying the shortfall within thirty days of the issue of the notice or such longer period as the Committee may permit.

(5) A scheme submitted in compliance with paragraph (4) may include proposals for –

<sup>10</sup> Volume 1992–1993, page 437.

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- (a) the appointment of a special manager acceptable to the Committee;
- (b) the discontinuance, in whole or in part, of the business of the permit holder.

(6) The Committee may accept a scheme submitted in compliance with paragraph (4) or, if it considers that the scheme is inadequate, it may require modifications to be negotiated between the Committee and the permit holder until the Committee is satisfied with the scheme.

(7) A permit holder shall give effect to any scheme accepted by the Committee.

(8) If a permit holder –

- (a) fails or is unable to submit a scheme which is accepted by the Committee;
- (b) fails to maintain the prescribed margin of solvency; or
- (c) contravenes paragraph (3),

the Committee may apply to the court for a winding-up order pursuant to Article 155 of the Companies (Jersey) Law 1991.<sup>11</sup>

(9) A special manager appointed pursuant to this Article shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his functions under the scheme unless it is shown that the act or omission was in bad faith.

(10) In this Article a reference to a permit holder includes a reference to a former permit holder.

(11) The Committee may by notice in writing and subject to such terms and conditions as may be expressed in the notice, waive the

<sup>11</sup> Volume 1990–1991, page 1023, and Volume 1994–1995, page 351.

requirements of this Article in the case of any permit holder named in the notice.

#### ARTICLE 24

##### **Appointment of actuary where Category B permits are held**

(1) A holder of a Category B permit to undertake long term business under this Law shall appoint as his actuary a person who is qualified in terms of paragraph (2).

(2) A person shall be qualified for appointment under paragraph (1) if –

- (a) he is a Fellow of the Institute of Actuaries;
- (b) he is a Fellow of the Faculty of Actuaries in Scotland; or
- (c) he satisfies the Committee that he has such actuarial qualifications and experience as are appropriate for an actuary under this Law.

(3) Within two weeks of making any appointment under paragraph (1), the permit holder shall notify the Committee in writing of the appointment.

(4) When any appointment under paragraph (1) comes to an end, the permit holder shall –

- (a) within two weeks, notify the Committee in writing of the termination of the appointment and of the reasons for the termination; and
- (b) within four weeks, make a new appointment under paragraph (1).

(5) If, at the expiry of the period referred to in sub-paragraph (b) of paragraph (4), the permit holder has not complied with

that sub-paragraph, he shall not effect any contract which constitutes long term business until he has complied with it.

(6) A permit holder who contravenes paragraph (5) shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

## ARTICLE 25

### **Assets of Category B permit holders attributable to long term business**

(1) Every holder of a Category B permit carrying on long term business shall keep his accounts in respect of such business separately from accounts kept in respect of any other business and shall maintain books of accounts and other records sufficient to ensure that the assets in his long term business fund and the liabilities of his long term business can be readily identified at any time.

(2) All receipts from such a permit holder's long term business shall –

- (a) be kept separately from all other assets in his possession or control;
- (b) be lodged in a special fund, referred to in this Law as his "long term business fund"; and
- (c) subject to paragraph (3), not be applied to any purpose other than the purposes of the permit holder's long term business.

(3) Sub-paragraph (c) of paragraph (2) shall not apply to any portion of the assets which is for the time being certified by the permit holder's actuary as exceeding the liabilities (as so certified) of the permit holder's long term business, provided that the application of funds in question does not have the effect of contravening paragraph (1) of Article 23.

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(4) No transfer of assets in a permit holder's long term business fund, other than assets to which sub-paragraph (c) of paragraph (2) applies, shall take place without the authority of a resolution of the permit holder's directors and the written consent of its actuary.

(5) Any mortgage, charge, lien or other right or security which would otherwise (or might otherwise) have the effect of bringing about a contravention of sub-paragraph (c) of paragraph (2) shall be void to the extent that it purports to have such effect.

(6) A permit holder who contravenes any of paragraphs (1) to (4) shall be guilty of an offence and liable to a fine.

ARTICLE 26

**Transfer of long-term business**

The Second Schedule shall have effect to regulate any transfer of long term business from a permit holder to –

- (a) an insurance company; or
- (b) another permit holder.

ARTICLE 27

**Location of assets**

(1) The Committee may, in writing, direct a permit holder or former permit holder to maintain in the Island, to the satisfaction of the Committee, or to transfer to and keep in the custody of a bank specified in the direction, assets of such value and description as may be specified in the direction.

(2) Assets maintained in the Island or kept in the custody of a bank pursuant to a direction under paragraph (1) shall not, so long as the direction is in force –

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- (a) cease to be so maintained in accordance with the direction; or
- (b) be removed from the bank; or
- (c) be made the subject of any mortgage, charge or lien,

except with the prior written authorisation of the Committee.

(3) Any person who fails to comply with a direction under paragraph (1) or who contravenes paragraph (2) shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or a fine not exceeding level 4 on the standard scale,<sup>12</sup> or both.

(4) Any mortgage, charge or lien purportedly created by a permit holder in contravention of paragraph (2) shall be ineffective against any claim by the liquidator or by any creditor of the permit holder.

## ARTICLE 28

### **Restriction on disclosure of information**

(1) Except as provided in paragraph (2) and in Articles 29, 30 and 31 –

- (a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person; and
- (b) no person who obtains any such information directly or indirectly from a person who has received it as aforesaid,

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

<sup>12</sup> Volume 1992–1993, page 437.

- (2) This Article does not apply to information which –
- (a) at the time of the disclosure, is or has already been made available to the public from other sources; or
  - (b) is 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.

(3) Any person who discloses information in contravention of this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine or both.

## ARTICLE 29

### **Disclosure facilitating discharge of functions by Committee**

(1) Article 28 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Committee to discharge its functions under this Law, the Collective Investment Funds (Jersey) Law 1988<sup>13</sup> and the Banking Business (Jersey) Law 1991.<sup>14</sup>

(2) Without prejudice to the generality of paragraph (1), Article 28 does not preclude the disclosure of information by the Committee to the auditor of a permit holder if it appears to the Committee that disclosing the information would enable or assist the Committee to discharge the functions mentioned in paragraph (1) or would otherwise be in the interests of persons in respect of whom insurance business is carried out.

(3) If, in order to enable or assist the Committee properly to discharge any of its functions under this Law, the Committee considers it necessary to seek advice from any qualified person on any matter requiring the exercise of professional skill, Article 28 does not preclude the disclosure by the Committee to that person of such information as

<sup>13</sup> Volume 1988–1989, page 133, Volume 1990–1991, page 1091, and R & O 8081.

<sup>14</sup> Volume 1990–1991, page 477. Volume 1992–1993, page 93 and Volume 1994–1995, page 375.

appears to the Committee to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

## ARTICLE 30

### **Disclosure facilitating discharge of functions by Viscount or others**

(1) Article 28 does not preclude the disclosure by the Committee of information to the Viscount in connexion with matters which are in the process of being dealt with pursuant to the Bankruptcy (Désastre) (Jersey) Law 1990.

(2) Subject to paragraph (3), Article 28 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to discharge functions in a country or territory outside the Island corresponding to those of the Committee under this Law.

(3) Paragraph (2) does not apply to information relating to persons in respect of whom insurance business is carried out.

## ARTICLE 31

### **Other permitted disclosures**

(1) Article 28 does not preclude the disclosure of information –

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not;
- (b) in connection with any other proceedings arising out of this Law;
- (c) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor of an



applicant, permit holder, former permit holder or other person appointed under Article 10.

(2) Article 28 does not preclude the disclosure by the Committee to the Attorney General or a police officer of information obtained by virtue of Articles 10 to 12, or of information in the possession of the Committee as to any suspected contravention of this Law, but any information so disclosed may only be disclosed by a police officer for the purposes of a prosecution either in the Island or, with the prior consent of the Attorney General, elsewhere.

(3) Article 28 does not preclude the disclosure by the Committee of information to any person or body responsible for a scheme for compensating policy holders (whether in the Island or elsewhere) if it appears to the Committee that disclosing the information would enable or assist the recipient of the information or the Committee to discharge its functions but any such disclosure by the Committee may only be made if the recipient of the information has given to the Committee a written undertaking that the information will not be further disclosed without the prior consent of the Committee.

## ARTICLE 32

### **Information supplied to Committee by relevant overseas authority**

Article 28 applies also to information supplied to the Committee for the purposes of its functions under this Law by a relevant supervisory authority in a country or territory outside the Island but no such information shall be disclosed except as provided in that Article or for the purpose of enabling or assisting the Committee to discharge those functions or with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Law or otherwise.

## ARTICLE 33

### **Control of advertising**

(1) The Committee may make Orders relating to the issue, form and content of advertisements for insurance.

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(2) Orders made under this Article may make different provision for different cases and, without prejudice to the generality of paragraph (1), may in particular –

- (a) prohibit the issue of advertisements for insurance of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise);
- (b) make provision with respect to matters which must be, as well as matters which may not be, included in advertisements for insurance;
- (c) provide for exemptions from any prohibition or requirement imposed by the Orders, including exemptions by reference to a person's membership of a class whose membership is determined otherwise than by the Committee.

(3) Any permit holder who issues in the Island or elsewhere, or, subject to paragraph (4), any other person who issues in the Island, an advertisement for insurance the issue of which is prohibited by an Order made under this Article or which does not comply with any requirements imposed by such an Order shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

(4) A person whose business it is to publish or arrange for publication of advertisements shall not be guilty of an offence under this Article if he proves that he received the advertisement in question for publication in the ordinary course of his business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he did not know and had no reason for believing that publication of the advertisement would constitute an offence.

(5) In this Article and in Article 34 –

“advertisement for insurance” means an advertisement inviting persons to enter into or to offer to enter into

contracts of insurance, and an advertisement which contains information calculated to lead directly or indirectly to persons entering into or offering to enter into such contracts shall be treated as an advertisement inviting them to do so; and

“advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by the exhibition of photographs or cinematograph films or by way of sound broadcasting or television, and references to the issue of an advertisement shall be construed accordingly.

- (6) For the purposes of this Article –
- (a) an advertisement for insurance issued or caused to be issued by any person by way of display or exhibition in a public place shall be treated as issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited;
  - (b) an advertisement for insurance inviting the transaction of insurance business with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued to the order of that person.

(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 newspaper, journal, magazine or other publication published and circulating principally outside the Island or in a sound or television broadcast transmitted principally for reception outside the Island.

## ARTICLE 34

**Advertising directions**

(1) If the Committee considers that any advertisement for insurance issued or proposed to be issued by or on behalf of a permit holder is misleading, or is undesirable having regard to the reputation of the Island in financial and commercial matters the Committee may by notice in writing give the permit holder a direction under this Article.

(2) A direction under this Article may contain any or all of the following prohibitions –

- (a) a prohibition of a particular advertisement;
- (b) a prohibition of the issue of advertisements of a specified type;
- (c) a requirement that advertisements of a particular description shall be modified in a specified manner;
- (d) a prohibition of the issue of any advertisement which is, wholly or substantially, repetitious of an advertisement which has been issued and which is identified in the direction.

(3) Not less than fourteen days before giving a direction under this Article the Committee shall give the permit holder concerned notice in writing of its intention to give the direction stating the reasons for the proposed direction and giving particulars of the rights conferred by paragraph (4).

(4) A permit holder to whom a notice under paragraph (3) is given may within the period of fourteen days beginning with the day on which the notice was given make written representations to the Committee, and the Committee shall take any such representations into account in deciding whether to give the direction.

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(5) A direction under this Article may be varied by a further direction, and a direction may be revoked by the Committee by giving notice in writing to the permit holder concerned.

(6) Any person who issues or causes to be issued an advertisement the issue of which is prohibited by a direction under this Article or which does not comply with any requirements imposed by such a direction shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or a fine, or both.

(7) The record of the conviction of any person for an offence under paragraph (6) shall be admissible in any civil proceedings as evidence of the facts constituting the offence.

## ARTICLE 35

### **Compensation schemes**

The States may by Regulations establish in relation to any insurance business activity schemes for compensating policy holders in cases where permit holders or former permit holders are unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their insurance business activities.

## *PART III*

### OFFENCES AND LEGAL PROCEEDINGS

## ARTICLE 36

### **Offences relating to false statements and information**

Any person who –

- (a) for the purposes of procuring, whether for himself or another person, a permit, makes any statement which he knows to be false in a material particular;

- (b) in purported compliance with a requirement imposed under Article 9 furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular;

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years or a fine, or both.

## ARTICLE 37

### **Legal proceedings**

(1) In any proceedings, a certificate purporting to be signed on behalf of the Committee and certifying –

- (a) that a particular person is or is not a permit holder or was or was not a permit holder at a particular time;
- (b) the date on which a particular permit holder or former permit holder was granted a permit or ceased to hold a permit;
- (c) whether or not a particular permit is or was granted subject to conditions;

shall be admissible in evidence.

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

(3) Where an offence under this Law committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and shall be liable to be prosecuted and punished accordingly.

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(4) Without prejudice to paragraph (3), any person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

(5) For the purposes of this Article, a person shall be deemed to be a director of a company if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or any of them act:

Provided that a person shall not, by reason only that the directors of a company act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(6) No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

(7) Notwithstanding any enactment or rule of law to the contrary, proceedings which may be taken against any person for an offence against this Law may be taken within the period of a year and a day from the date on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the knowledge of the Committee or, where the person in question was outside the Island at that date, within the period of a year and a day from the date on which he first lands in the Island thereafter, whichever of the said periods last expires.

(8) For the purposes of paragraph (7), a certificate under the hand of the President of the Committee as to the date on which such evidence as aforesaid came to the knowledge of the Committee shall be conclusive evidence thereof.

*PART IV*

## MISCELLANEOUS AND SUPPLEMENTAL

## ARTICLE 38

**Orders**

(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which is to be prescribed under this Law.

(2) The Subordinate Legislation (Jersey) Law 1960<sup>15</sup> shall apply to Orders made under this Law.

## ARTICLE 39

**Codes of Practice**

(1) The Committee may, after consultation with such persons as appear to be representative of the interests concerned –

- (a) prepare and issue codes of practice for the purpose of providing practical guidance in respect of any provisions of this Law and establishing sound principles for the conduct of insurance business;
- (b) revise any such code by revoking, varying, amending, or adding to the provisions of the code.

(2) The Committee shall cause any code prepared under this Article to be printed and distributed, and may make such arrangements as it thinks fit for its distribution, including causing copies to be put on sale to the public at such price as the Committee considers reasonable.

<sup>15</sup> Tome VIII, page 849.



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(3) Subject to paragraphs (4) and (5), a failure on the part of any person to follow guidance contained in a code issued under this Article shall not itself render that person liable to proceedings of any kind or invalidate any transaction but such a code shall be admissible as evidence in any proceedings.

(4) In determining whether a person's conduct amounts to a contravention of any requirement in this Law or any Order or Regulations made under it –

- (a) non-compliance by him of any relevant provision of a code issued under this Article may be relied on as tending to establish liability; and
- (b) compliance by him with any relevant provision of such a code may be relied on as tending to negative liability.

(5) Any provision of a code issued under this Article which appears to a court conducting civil proceedings to be relevant to any question arising in those proceedings may be taken into account in determining that question.

(6) In this Article, references to the Committee preparing a code include references to the Committee adopting, with or without modifications, a code prepared by any other person, whether within or outside the Island.

## ARTICLE 40

### **Service of notices**

(1) This Article shall have effect in relation to any notice or other document required or authorised by or under this Law to be given to or served on any person.

(2) Any such document may be given to or served on the person in question –

- (a) by delivering it to him;

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- (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may –
- (a) in the case of a company, be given to or served on the secretary, clerk or other similar officer of the company or any person who purports to act in any such capacity, by whatever name called;
  - (b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

(4) For the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954<sup>16</sup> (meaning of service by post) in its application to this Article, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that –

- (a) in the case of a company or its secretary, clerk or other officer or person referred to in sub-paragraph (a) of paragraph (3), it shall be the address of the registered or principal office of the company;
- (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the Island or of a partnership carrying on business outside the Island shall be their principal office within the Island.

(5) If the person to be given or served with any document mentioned in paragraph (1) has specified an address within the Island other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept documents of the

<sup>16</sup> Tome VIII, page 381.

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same description as that document, that address shall also be treated for the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954 as his proper address.

#### ARTICLE 41

##### **Transitional provisions**

The transitional provisions in the Third Schedule shall have effect in relation to the persons described therein who carried on insurance business immediately prior to the day appointed under Article 43 for the commencement of this Law.

#### ARTICLE 42

##### **Repeal**

The Insurance Business (Jersey) Law 1983<sup>17</sup> and the Insurance Business (Amendment) (Jersey) Law 1984<sup>18</sup> are repealed.

#### ARTICLE 43

##### **Short title and commencement**

This Law may be cited as the Insurance Business (Jersey) Law 1996 and shall come into force on such day as the States may by Act appoint.

**G.H.C. COPPOCK**

*Greffier of the States.*

<sup>17</sup> Volume 1982–1983, page 71.

<sup>18</sup> Volume 1984–1985, page 135.

*FIRST SCHEDULE***(Article 4)***PART I*

## CLASSES OF LONG TERM BUSINESS

<b>Number</b>	<b>Description</b>	<b>Nature of business</b>
I	Life and annuity	Effecting and/or carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below.
II	Marriage and birth	Effecting and/or carrying out contracts of insurance to provide a sum on marriage or on birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Effecting and/or carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

IV	Permanent health	<p>Effecting and/or carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that –</p> <p>(a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and</p> <p>(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.</p>
V	Tontines	Effecting and/or carrying out tontines.
VI	Capital redemption	Effecting and/or carrying out capital redemption contracts, if such contracts are effected and carried out by a person (not being a person carrying on a banking business) who carries on long term business of class I, II, III, IV or V or general business of any class.
VII	Pension fund management	Effecting and/or carrying out –

- (a) contracts to manage the investments of pension funds, (other than funds solely for the benefit of the officers or employees and their dependants of the person effecting and carrying out such contracts, or in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company), or
- (b) contracts of the kind mentioned in paragraph (a) above that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest,

if such contracts are effected and carried out by a person (not being a person carrying on a banking business) who carries on long term business of class I, II, III, IV or V or general business of any class.

**PART II****CLASSES OF GENERAL BUSINESS**

<b>Number</b>	<b>Description</b>	<b>Nature of Business</b>
1	Accident	<p>Effecting and/or carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the persons insured –</p> <p>(a) sustaining injury as the result of an accident or of an accident of a specified class, or</p> <p>(b) dying as the result of an accident or of an accident of a specified class, or</p> <p>(c) Becoming incapacitated in consequence of disease or of disease of a specified class,</p> <p>inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within class 2 or within class IV in Part I (permanent health).</p>

2	Sickness	Effecting and/or carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within class IV in Part I.
3	Land Vehicles	Effecting and/or carrying out contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles but excluding railway rolling stock.
4	Railway rolling stock	Effecting and/or carrying out contracts of insurance against loss of or damage to railway rolling stock.
5	Aircraft	Effecting and/or carrying out contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
6	Ships	Effecting and/or carrying out contracts of insurance upon vessels used on the sea or on inland water, or upon the machinery, tackle, furniture or equipment of such vessels.
7	Goods in transit	Effecting and/or carrying out contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.



8	Fire and natural forces	Effecting and/or carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
9	Damage to property	Effecting and/or carrying out contracts of insurance against loss of or damage to property (other than property to which classes 3 to 7 relate) due to hail or frost or to any event (such as theft) other than those mentioned in class 8.
10	Motor vehicle liability	Effecting and/or carrying out contracts of insurance against damage arising out of or in connexion with the use of motor vehicles on land, including third-party risks and carrier's liability.
11	Aircraft liability	Effecting and/or carrying out contracts of insurance against damage arising out of or in connexion with the use of aircraft, including third-party risks and carrier's liability.
12	Liability for ships	Effecting and/or carrying out contracts of insurance against damage arising out of or in connexion with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability.

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| 13 | General liability | Effecting and/or carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, the risks in question not being risks to which class 10, 11 or 12 relates.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 14 | Credit            | Effecting and/or carrying out contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 15 | Suretyship        | <p>Effecting and/or carrying out –</p> <p>(a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;</p> <p>(b) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee,</p> <p>if, in the case of contracts referred to in head (b) above, such contracts are effected and carried out by a person not carrying on a banking business, and such contracts are effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums.</p> |

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|----|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16 | Miscellaneous financial loss | <p>Effecting and/or carrying out contracts of insurance against any of the following risks, namely –</p> <ul style="list-style-type: none"> <li>(a) risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;</li> <li>(b) risks of loss to the persons insured attributable to their incurring unforeseen expense (other than such loss as is covered by contracts falling within class 18);</li> <li>(c) risks neither falling within head (a) or (b) above nor being of a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class.</li> </ul> |
| 17 | Legal expenses               | <p>Effecting and/or carrying out contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 18 | Assistance                   | <p>Effecting and/or carrying out contracts of insurance providing either or both of the following benefits, namely –</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

- (a) assistance (whether in cash or kind) for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; or
- (b) assistance (whether in cash or kind) for persons who get into difficulties otherwise than as mentioned in paragraph (a) above.

### *PART III*

#### GROUPS

1	Accident and health	Classes 1 and 2
2	Motor	Class 1 (to the extent that the relevant risks are risks of the person insured sustaining injury, or dying, as the result of travelling as a passenger) and classes 3, 7 and 10.
3	Marine and transport	Class 1 (to the said extent) and classes 4, 6, 7 and 12.
4	Aviation	Class 1 (to the said extent) and classes 5, 7 and 11.
5	Fire and other damage to property	Classes 8 and 9.
6	Liability	Classes 10, 11, 12 and 13.
7	Credit and suretyship	Classes 14 and 15

## PART IV

## INTERPRETATION

## 1.-(1) In this Schedule –

“class” means a class of the kind specified in Part I or Part II;

“group” means a group of the kind specified in Part III.

(2) A reference in this Schedule to a numbered class or to a numbered group is a reference to the class so numbered in Part I or Part II or to the group so numbered in Part III, as the case may be.

(3) A class or part of a class may be described in an order or permit by reference to a group specified in Part III.

## 2.        In this Schedule –

(a) “long term business” means insurance business of any of the classes specified in Part I;

(b) “general business” means insurance business of any of the classes specified in Part II.

3.-(1) For the purposes of this Schedule the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if paragraph (2) or (3) applies to the contract.

(2) This paragraph applies to a contract whose principal object is within any class of long term business but which contains subsidiary

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provisions within general business class 1 or 2 if the insurer is authorised as mentioned in paragraph (2) of Article 4 to carry on long term business class I.

(3) This paragraph applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14 or 15.

4. In this Schedule, unless the context otherwise requires

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“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;

“industrial assurance business” has the meaning given in section 1(2) of the Industrial Assurance Act 1923 (13 & 14 Geo. V. cap. 8);

“vessel” includes hovercraft.

*SECOND SCHEDULE***(Article 26)**

1. Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on in the Island by an insurance company (“the transferor company”) is to be transferred to another body whether incorporated or not (“the transferee company”) the transferor company or transferee company may apply to the Court for an order sanctioning the scheme.

2. If any such scheme involves a compromise or arrangement the provisions of Articles 125 to 127 of the Companies (Jersey) Law 1991 shall have effect as regards that compromise or arrangement, but without prejudice to the operation of the provisions of this Schedule in relation to the scheme.

3. The Court shall not determine an application under this Schedule unless the order of justice is accompanied by a report on the terms of the scheme by an independent actuary and the Court is satisfied that the requirements of paragraph 4 have been complied with.

4. The said requirements are –

- (a) that a notice has been published in the Jersey Gazette stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in sub-paragraph (d) will be available as required by that sub-paragraph;
- (b) except where the Court has otherwise directed, that a statement –
  - (i) setting out the terms of the scheme; and
  - (ii) containing a summary of the report mentioned in paragraph 3 sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long

term policy holders of the companies concerned, has been sent to each of those policy holders and to every member of those companies;

- (c) that a copy of the order of justice, of the report mentioned in paragraph 3 and of any statement sent out under sub-paragraph (b) has been served on the Committee and that a period of not less than twenty-one days has elapsed since the date of service;
- (d) that copies of the order of justice and of the report mentioned in paragraph 3 have been open to inspection at offices in the Island of the companies concerned for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with sub-paragraph (a).

5. Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the order of justice and of the report mentioned in paragraph 3 to any person who asks for one at any time before an order sanctioning the scheme is made on the order of justice.

6. On any order of justice under this Schedule –

- (a) the Committee; and
- (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme,

shall be entitled to be heard.

7. The Court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised to carry on long term business of the class or classes to be transferred under the scheme.



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8. No transfer described in paragraph 1 shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this Schedule.

9. Where the Court makes an order under this Schedule sanctioning a scheme, the Court may, either by that order or by any subsequent order, make provision for all or any of the following matters –

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company;
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

10. Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any other hypothec, security interest or other charge which is by virtue of the scheme to cease to have effect.

11. Where a scheme is sanctioned by an order of the Court under this Schedule the transferee company shall, within ten days from the date on which the order is made or such longer period as the

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Committee may allow, deposit two office copies of the order with the Committee.

12. Any person who fails to comply with paragraph 5 or 11 shall be guilty of an offence.

13. A person guilty of an offence under paragraph 5 is liable to a fine not exceeding level 4 on the standard scale and a person guilty of an offence under paragraph 11 is liable to a fine not exceeding level 3 on the standard scale.

14. In this Schedule –

“arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

**THIRD SCHEDULE****(Article 41)****Transitional provisions**

1. Notwithstanding anything in this Law, a person who, immediately before the appointed day, was carrying on insurance business in accordance with the provisions of the repealed Law shall be entitled to carry on such business without a permit –

- (a) for the period of three months beginning with that day; or
- (b) if before the expiration of that period he applies for a permit, until the permit is granted, or finally refused, or the application is withdrawn.

2. A person who immediately before the appointed day carried on restricted insurance business in accordance with a permit issued under Article 4(1) of the repealed Law shall on the appointed day be deemed to be a Category B permit holder and a permit issued to such a person authorizing him to carry on insurance business under the repealed Law shall be deemed for the purposes of this Law to be a Category B permit issued under this Law and valid until the renewal date prescribed under Article 5(2).

3. A person who immediately before the coming into force of the repealed Law carried on general insurance business and who pursuant to paragraph 2 of the Third Schedule to that Law was granted a permit to carry out such insurance business shall on the appointed day be deemed to be a Category A permit holder and a permit issued to such a person authorizing him to carry on insurance business under the repealed Law shall be deemed for the purposes of this Law to be a Category A permit issued under this Law and valid until the renewal date prescribed under Article 5(2).

4. In this Schedule –

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“the appointed day” means the day appointed under Article 43 for the commencement of this Law;

“the repealed Law” means the Insurance Business (Jersey) Law 1983 repealed by Article 42.