

**DRAFT INSURANCE BUSINESS (AMENDMENT)
(JERSEY) LAW 199**

**Lodged au Greffe on 19th May 1998
by the Finance and Economics Committee**



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Report

The Insurance Business (Jersey) Law 1996 came into force on 1st October of that year, and during the first 12 months of operation it became evident that a few minor amendments were necessary for it to operate fully as intended. The opportunity has also been taken to bring the Law into line with the proposed new Investment Business Law which is due to be debated by the States shortly, and the amendment has been worded in such a way as to reflect the fact that the Financial Services Commission will have taken over the responsibilities of the Finance and Economics Committee for this Law by the time that the amendment has been enacted.

Article 1 clarifies the definition of insurers required to register under the Insurance Business (Jersey) Law 1996 by defining "insurance company" more widely than previously, thus making it evident that a mutual insurance company, for example, is subject to the legislation.

Article 2 corrects a drafting error in the original legislation relating to Lloyds' syndicates. Under the Law, these syndicates are exempt from registration, but in the instance where a syndicate happens also to be a Jersey entity, the Jersey registration takes priority and the exemption does not apply. The Amendment corrects this situation so that all Lloyds' syndicates are exempt.

Article 3 amends the definition of insurers to whom an insurance permit may be issued to definitively encompass all those carrying on insurance business in the Island. This brings the Law into line with that in the United Kingdom.

Articles, 4, 5 and 6 are included as a result of the "Saunders" judgment by the European Court of Human Rights relating to the right against self-incrimination, where it was ruled that a statement made by a person during an investigation may not be used by the prosecution in evidence against them in any criminal proceedings. A similar amendment is being made to all other legislation as appropriate.

Article 7 relates to the format of information which may be produced under the powers to obtain information, and brings the Insurance Business Law into line with the new Investment Business Law.

Article 8 introduces a new Article 31A relating to the co-operation with the authorities of countries or territories outside Jersey who discharge functions similar to those of the Commission. This is part of the improved powers of international co-operation in the supervision and regulation of financial services business as a whole.

Article 9 introduces a new Article 39A on public statements. This strengthens the Commission's powers in allowing public statements to be made relating to an insurer registered under the Insurance Business Law, where this is considered to be in the interests of existing or potential policyholders or investors in that insurer. Again, this is in line with provisions contained in the new Investment Business Law, and mirrors similar proposals being enacted in other jurisdictions.

Finally, Article 10 introduces amendments to the procedure by which the assets and liabilities of an insurer are transferred to another insurer, usually as a result of a corporate merger or takeover. The Insurance Business Law requires that such a transfer be approved in the Royal Court by an Order of Justice, which effectively means that the insurer has to sue the Finance and Economics Committee. This method is considered inappropriate for the circumstances, and the amendment replaces the Order of Justice with a Representation to the Court for this purpose. Article 10 also reinforces the provision that, where such a transfer includes property to which obligations, restrictions or liabilities attach, such obligations, restrictions and liabilities shall transfer with the property.

The amendments proposed by the Finance and Economics Committee have been discussed with all the relevant organisations and interested parties in the Island. They have also been considered and approved by the Jersey Financial Services Commission Organising Committee.

Explanatory Note

The draft Law inserts a new Article into the Insurance Business (Jersey) Law 1996 (“the principal Law”) to provide that the Jersey Financial Services Commission may -

- (a) exercise at the request of or to assist a supervisory authority outside the Island and discharging there similar functions its powers under the principal Law relating to -
 - (i) the imposition of conditions on permits to carry on insurance business;
 - (ii) the refusal to grant or to cancel such permits;
 - (iii) the obtaining of information and documents;
 - (iv) investigation; and
 - (v) entry; and
- (b) exercise the power to communicate certain information in the possession of the Commission to such a supervisory authority whether or not that information is in its possession as the result of the exercise of the powers described in paragraph (a) above. (Article 31A inserted by *Article 8*).

Paragraph (4) of the proposed Article 31A sets out the criteria to which the Commission may have regard in deciding whether or not to exercise its powers specified in paragraph (1).

Provision is made for the contribution of the costs of the Commission’s powers by the overseas authority (paragraph (5)).

Another new Article is inserted to provide that where a person has contravened certain specified provisions of the Law or failed to comply with a Code of Practice, the Commission may issue a public statement concerning that person. The Commission may also issue a public statement concerning a person believed by the Commission to be

carrying on insurance business if it would be in the interests of policy holders or potential policy holders to do so. (Article 39A inserted by *Article 9*.)

The opportunity is also taken to -

- (a) make it clear that for the purposes of the principal Law a company carrying on insurance business includes any organisation carrying on such business (*Article 1*);
- (b) amend a typographical error in paragraph (4) of Article 4 by amending the reference therein to paragraph (1) of that Article to paragraph (6) of that Article (*Article 2*);
- (c) make it clear that an applicant for a Category A permit must provide the Commission with evidence from the relevant supervisory authority that the insurance business carried on in or from within the Island is subject to its supervision (*Article 3*); and
- (d) reverse the effect of the existing paragraphs (6), (8) and (4) of Articles 9, 10 and 11 respectively and provide that a statement made by a person in compliance with a requirement imposed by those Articles may *not* be used by the prosecution in evidence against him in any criminal proceedings except proceedings in respect of offences created by those Articles or Article 36 (Articles 4, 5 and 6). These amendments follow a recent ruling by the European Court of Human Rights relating to the right against self-incrimination.
- (e) provide in the Second Schedule to the principal Law that -
 - (i) where an application is made to the Royal Court for a transfer of long-term insurance business from a permit holder to another body it shall be by way of a Representation to the Court and not by an order of justice as is the case at present;

- (ii) the provisions of the Companies (Jersey) Law 1991 involving a compromise or arrangement apply only in the case of companies to which that Law applies; and
- (iii) where property is transferred by an order of the Court obligations and liabilities in respect of that property that bound the transferor company shall continue to bind the transferee company (*Article 10*).

Article 11 contains the short title.

INSURANCE BUSINESS (AMENDMENT) (JERSEY) LAW 199

A LAW to amend the Insurance Business (Jersey) Law 1996, sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

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

ARTICLE 1

In paragraph (1) of Article 1 of the Insurance Business (Jersey) Law 1996¹ (hereinafter referred to as “the principal Law”) for the definition of “insurance company” there shall be substituted the following definition -

“ ‘insurance company’ means the person carrying on insurance business;”.

ARTICLE 2

In paragraph (4) of Article 4 for the words “paragraphs (1) and (2)” there shall be substituted the words “paragraphs (2) and (6)”.

¹ Volume 1996-1997, page 86.

ARTICLE 3

In sub-paragraph (c) of paragraph (2) of Article 6 of the principal Law for the words commencing “of any branch,” to the end of the sub-paragraph there shall be substituted the words “carried on in or from within the Island is subject to the authority’s supervision.”.

ARTICLE 4

For paragraph (6) of Article 9 of the principal Law there shall be substituted the following paragraph -

“(6) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (8) or Article 36.”.

ARTICLE 5

For paragraph (8) of Article 10 of the principal Law there shall be substituted the following paragraph -

“(8) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (7) or Article 36.”.

ARTICLE 6

For paragraph (4) of Article 11 of the principal Law there shall be substituted the following paragraph -

“(4) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him in any criminal proceedings except proceedings under paragraph (3) and Article 36.”.

ARTICLE 7

After paragraph (9) of Article 12 of the principal Law there shall be inserted the following paragraph -

“(10) The power to obtain information conferred by sub-paragraph (b) of paragraph (4) includes a power to require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.”.

ARTICLE 8

After Article 31 of the principal Law there shall be inserted the following Article -

“ARTICLE 31A

Co-operation with relevant supervisory authority

(1) The Commission may exercise the following powers at the request of or for the purposes of assisting a relevant supervisory authority -

- (a) the power to attach or vary conditions of a permit pursuant to paragraphs (1) to (6) of Article 6;
- (b) the power to refuse to grant a permit under paragraph (1) of Article 6 or to cancel a permit under paragraph (9) of Article 6;
- (c) the powers relating to information and documents under Article 9;
- (d) the powers of investigation under Article 10;
- (e) the powers of entry under Article 12;
- (f) the power to communicate to the relevant supervisory authority information which is in the

possession of the Commission, whether or not as a result of the exercise of any of the above powers, other than information relating to the persons who have transacted insurance business with a permit holder or former permit holder unless the persons concerned have consented to such disclosure.

(2) The Commission shall not exercise powers by virtue of this Article unless it is satisfied that the assistance is requested by the relevant supervisory authority only for the purposes of the exercise of one or more of its supervisory functions.

(3) No information shall be disclosed under subparagraph (c) or (f) of paragraph (1) unless the Commission is satisfied that the relevant supervisory authority complies with or will comply with any conditions to which the Commission may, in its discretion, subject such disclosure.

(4) In deciding whether to exercise its powers by virtue of this Article, the Commission may take into account, in particular -

- (a) whether corresponding assistance would be given in that country or territory to the Commission;
- (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in the Island or involves the assertion of a jurisdiction not recognised by the Island;
- (c) the seriousness of the case and its importance in the Island and whether the assistance could be obtained by other means;
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(5) The Commission may decline to exercise powers under this Article unless the relevant supervisory authority

undertakes to make such contribution towards the costs of its exercise as the Commission considers appropriate.”.

ARTICLE 9

After Article 39 of the principal Law there shall be inserted the following Article -

“ARTICLE 39A

Public statements

(1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have committed a contravention of the type referred to in -

- (a) paragraph (2) of Article 4;
- (b) Article 6;
- (c) Article 14;
- (d) Article 33;
- (e) Article 34;
- (f) Article 36;
- (g) any Regulation or Order made under this Law; or

has failed to comply with a Code of Practice under Article 39.

(2) The Commission may issue a public statement concerning a person who it believes to be carrying on insurance business, whether in the Island or elsewhere, if it appears to the Commission to be desirable to do so in the interests of policy holders or potential policy holders.

(3) Where a public statement, issued under this Article, concerns a permit holder the Commission shall, at least seven

days prior to the publication of the statement, give written notice to the person concerned of the proposed statement and of the reasons for which it intends to act.”.

ARTICLE 10

In the Second Schedule to the principal Law -

- (a) in paragraph 1 -
 - (i) for the words “an insurance company” there shall be substituted the words “a permit holder”; and
 - (ii) for the words “apply to the Court” there shall be substituted the words “make a Representation to the Court”;
- (b) in paragraph 2 after the word “effect” there shall be inserted the words “in the case of a company to which that Law applies”;
- (c) in paragraph 3 for the words “order of justice” there shall be substituted the words “Representation to the Court”;
- (d) in sub-paragraphs (c) and (d) of paragraph 4 for the words “order of justice” there shall be substituted the words “Representation to the Court”;
- (e) in paragraph 5 for the words “order of justice” in both places where they occur there shall be substituted the words “Representation to the Court”;
- (f) in paragraph 6 for the words “order of justice” there shall be substituted the words “Representation to the Court”;
and
- (g) in paragraph 10 the full-stop at the end shall be deleted and there shall be added the following words -

“, except that any property so transferred vests in the transferee company subject to any obligations and liabilities however arising which bound the transferor company in relation to that property on the date of the order.”;

- (h) in paragraph 14, after the definition of “liabilities” there shall be inserted the following definition-

“ ‘obligations’ includes any requirement or restriction imposed by any enactment affecting the development, use or disposition of property or any transaction in relation to property;”.

ARTICLE 11

{This Law may be cited as the Insurance Business (Amendment) (Jersey) Law 199 .