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The States of Alderney

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Channel Islands

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## Projet de Loi Entitled

### **The Gambling (Alderney) Law, 1999**

Incorporating:

The Gambling (Alderney) (Amendment) Law, 2001

The Gambling (Alderney) Law, 1999 (Amendment) Ordinance, 2003

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## **The Gambling (Alderney) Law, 1999**

**THE STATES**, in pursuance of their Resolution of the 7th day of October, 1998, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

### *Alderney Gambling Control Commission*

#### **Alderney Gambling Control Commission.**

**1.** (1) There is established by, and in accordance with the provisions of, this Law a body to be known as the Alderney Gambling Control Commission (in this Law referred to as "**the Commission**"), consisting of a chairman and three other members appointed by the Committee.

(2) The provisions of the Schedule 1 shall have effect with respect to the Commission.

(3) The States may from time to time by Ordinance vary the Schedule 1 and make any necessary consequential or transitional provision.

#### **Duties of the Commission.**

**2.** It shall be the duty of the Commission, in accordance with the provisions of this Law and of Ordinances made thereunder, to keep under review the extent and character of gambling in the Island of Alderney and, in particular-

- (a) to grant such licences as may be necessary to a person applying therefor for the purpose of providing and operating any form of gambling;
- (b) to supervise and control, including by way of inspection and the imposition of conditions, the conduct and operation of any form of gambling so licensed;
- (c) to investigate the character and financial status of any person applying for, or holding, a licence mentioned in paragraph (a) or

otherwise concerned with the provision, operation or management of any form of gambling;

- (d) to ensure that all fees, royalties and other monies payable to the States by a person providing or operating any form of gambling are duly paid and accounted for;

and to perform such other functions as are assigned to the Commission by this Law or by Ordinances made thereunder.

**Communications by auditors to Commission.**

3. (1) No duty to which an auditor of any person licensed to organise any form of gambling made lawful by an Ordinance under this Law is subject is contravened by reason of his communication in good faith to the Commission, whether or not in response to a request made by it, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission under this Law or an Ordinance made thereunder.

(2) This section applies to any matter of which the auditor becomes aware in his capacity as auditor and which relates to the business or affairs of the person so licensed or any associated body thereof.

(3) If it appears to the States, after consultation with the Commission, that any accountants or class thereof to whom subsection (1) applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Commission as mentioned in that subsection, the States may by Ordinance specify circumstances in which matters are to be communicated to the Commission as mentioned in subsection (1); and it shall be the duty of any accountant to whom the Ordinance applies to communicate a matter to the Commission in the circumstances specified in the Ordinance.

(4) This section applies in relation to the auditor of a person formerly licensed to organise any form of gambling made lawful by an Ordinance under this Law as it applies to a person currently so licensed.

(5) In this section, "**associated body**" means a person whom the Commission reasonably believes to be associated with the operations of the person licensed to organise any form of gambling made lawful by an Ordinance under this Law.

**Liability of members, officers and servants.**

4. No member, officer or servant of the Commission is personally liable in any civil proceedings in respect of anything done or omitted to be done in the discharge or purported discharge of any function of the Commission under this Law or an Ordinance made thereunder, unless the thing is done or omitted to be done in bad faith.

*Lawfulness of gambling*

**General prohibition on gambling.**

5. (1) Except as may be provided by the provisions of any Ordinance made under this Law, all forms of gambling are unlawful.

(2) A person shall not organise or in any way take part in unlawful gambling.

**Power of States to make Ordinances in relation to gambling.**

6. Subject to the provisions of this Law, the States may from time to time by Ordinance make such provision as they may deem expedient for making lawful such forms of gambling as may be specified in any such Ordinance, for regulating any such form of gambling and for matters ancillary thereto, for prohibiting or regulating any form of advertising or publicity relating to any form of gambling and, without prejudice to the generality of the foregoing, they may, in particular, make provision in any such Ordinance for all or any of the following matters-

- (a) empowering the Commission or the Committee (as the case may be) by regulations to prescribe conditions for the better conduct and control of, and for matters of administration in connection with, any form of gambling made lawful by Ordinance;
- (b) the fees and other charges to be made by the States for the purposes of any such Ordinance;

- (c) the imposition of penalties in respect of any offence under this Law, being a contravention of any provision of any Ordinance made under this Law:

Provided that such penalties shall not exceed the penalties prescribed by section 13(1);

- (d) the licensing by the Commission of persons to organise any form of gambling made lawful by Ordinance;
- (e) the investigation by the Commission into the suitability of any applicant for, or a holder of, a licence for the organisation of gambling, including the fees and other charges to be made by the Commission for such investigation;
- (f) the grant, renewal, suspension or revocation by the Commission of licences for the organisation of gambling;
- (fa) the taking of steps by the Commission falling short of suspension, which may include the imposition of financial penalties, in respect of any contravention of the terms of a licence for the organisation of gambling:

Provided that any financial penalty imposed shall not exceed the penalties prescribed by section 13 (1);

- (g) enabling any applicant for, or holder of, a licence for the organisation of gambling to appeal from any decision of the Commission refusing to grant or renew, suspending or revoking, or imposing penalties in respect of the conduct of, any such licence;
- (h) generally for carrying this Law into effect.

**Gambling contracts to be void.**

7. (1) Any contract or agreement, whether verbal or written, by way of gambling shall be void, and no action shall be brought or maintained for recovering any money or money's worth alleged to have been won in any gambling transaction, or any money or money's worth deposited in the hands of any person to await the event on which any gamble has been made:

Provided that this subsection shall not apply to any contribution or subscription, or agreement to contribute or subscribe, for or towards any plate, prize or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise.

(2) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement made void by subsection (1) or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or agreement, or in respect of any service in relation to any such contract or agreement, shall be void and no action shall be brought or maintained to recover such sum of money.

**Security given in respect of gambling to be deemed to have been given for illegal consideration.**

8. Any note, bill, bond, charge or other security or conveyance whatsoever given, granted, drawn or entered into or executed by any person whatsoever where the whole or any part of the consideration for such security or conveyance shall be for money or money's worth won in any gambling transaction, or for reimbursing or repaying any money knowingly lent or advanced for such gambling, or lent or advanced at the time and place of such gambling to any person gambling at such time and place, shall be deemed to have been made, drawn, accepted, given or executed for an illegal consideration.

**Sales by lottery not actionable.**

9. No action shall be brought or maintained to recover any land, goods or other thing whatsoever sold by means of any game, lottery or other means depending on, or to be determined by, chance or lot.

*Gambling with strangers*

**Prohibition on gambling transactions with strangers.**

**10.** (1) Subject to the provisions of subsection (2), no person shall, whether as principal or as servant or agent of any other person-

- (a) conduct any business in the course of which any gambling transaction is negotiated or entered into with, or on behalf of, a stranger;
- (b) permit a stranger to participate in any form of gambling lawfully conducted, organised or promoted by that person or that other person, as the case may be.

(2) The provisions of subsection (1) shall not apply to-

- (a) the laying-off, by a person carrying on the business of bookmaker in the Island of Alderney, of bets lawfully negotiated or entered into by him;
- (b) bets (including bets made by way of pool betting) negotiated or entered into by a stranger on horse races or dog races lawfully run in the Island of Alderney;
- (c) the distribution by a licensed pool agent on behalf of a registered pool promoter who is the principal of such agent to persons in the Island of Alderney relating to a pool betting competition promoted by such registered pool promoter, or to the collection by such agent of completed entry forms and entry fees from persons in the Island of Alderney and the despatch of such forms and fees to such registered pool promoter;
- (d) a person authorised under and acting in accordance with an Ordinance made pursuant to subsection (3).

(3) The States may by Ordinance prescribe circumstances in which, conditions subject to which, the description of strangers with whom and the forms of gambling in

relation to which a person may be authorised to engage in the activities described in subsection (1).

(4) Section 6 shall apply for the purposes of an Ordinance made under subsection (3) as if the reference in paragraph (a) to "any form of gambling made lawful by Ordinance" were a reference to "any gambling transaction with a stranger permitted by Ordinance".

(5) In this section, "**stranger**" means a person who is not actually present in the Bailiwick of Guernsey, or, in the case of a lottery promoted by the States of Guernsey and the States of Jersey, is not actually present in the Channel Islands, and includes a body corporate whether incorporated in the Bailiwick of Guernsey or elsewhere.

*Offences and penalties*

**Cheating to be an offence.**

**11.** Any person who, by means of any fraud or unlawful device or practice in any gambling transaction, wins from any other person for himself or for any other person any money or money's worth, shall be guilty of an offence and shall be liable-

- (a) on summary conviction, to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding six months, or to both; and
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding five years, or to both.

**Prohibition on inciting young persons to gamble.**

**12.** (1) No person shall for the purpose of earning commission, reward or other profit send, or cause to be sent, to a young person any circular, notice, advertisement, letter, telegram or other document which invites, or may reasonably be implied to invite the young person receiving it to enter or take any share or interest in any gambling transaction, or to apply to any person or at any place, with a view to obtaining advice or information for the purpose of gambling, or for information as to any race, fight, game, sport or other contingency on which any form of gambling is generally carried on.

(2) If any such circular, notice, advertisement, letter, telegram or other document as aforesaid, names or refers to anyone as a person to whom payment may be made, or from whom advice or information may be obtained, for the purpose of, or in relation to, gambling, the person so named or referred to shall be deemed to have sent, or caused to be sent, such document as aforesaid, unless he proves that he had not consented to be so named, and that he was not in any way party to, and was wholly ignorant of, the sending of such document.

(3) If any circular, notice, advertisement, letter, telegram or other document as aforesaid is sent to any person at any college, school or other place of education, and the person to whom such document is sent is a young person, the person sending the document, or causing it to be sent, shall be deemed to have known that the person to whom it was sent was a young person, unless he proves that he had reasonable grounds for believing such person to be eighteen years of age or over.

**Offences and penalties.**

**13.** (1) A person who contravenes any provision of this Law, or of any Ordinance made thereunder, shall be guilty of an offence under this Law and, save where otherwise provided by this Law or by the Ordinance, shall be liable-

- (a) in the case of a first offence, to a fine not exceeding £25,000, or to imprisonment for a term not exceeding six months, or to both; and
- (b) in the case of a second or subsequent offence under the same provision, to a fine not exceeding £50,000 or to imprisonment for a term not exceeding two years, or to both.

(2) Where an offence under this Law is committed-

- (a) by a servant or agent of any other person; or
- (b) except in a case to which paragraph (c) applies, on any premises by a person other than the occupier or person having the management of the premises; or

- (c) at or in connection with any event or any form of gambling by a person other than the person promoting, organizing or conducting the event or the gambling,

the principal, or the occupier or person having the management of the premises, or the person promoting, organizing or conducting the event or the gambling, as the case may require, shall also be guilty of that offence.

(3) The court by which any person is convicted of any offence under this Law may order anything produced to the court and shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

**Offences by bodies corporate.**

**14.** (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

**Defence of due diligence.**

**15.** (1) In any proceedings for an offence under this Law, it shall, subject to subsection (2), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless-

- (a) at least seven clear days before the hearing; and

- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

*General provisions*

**General provisions as to Ordinances.**

**16.** (1) An Ordinance under this Law may-

- (a) be amended or repealed by a subsequent Ordinance thereunder; and

- (b) contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance may be exercised-

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

- (b) so as to make, as respects the cases in relation to which it is exercised-

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Powers of officers of police.**

17. (1) Where any officer of police has reasonable grounds for suspecting that any provision of this Law or of any Ordinance made thereunder is being, or has been, or is about to be, contravened in any place to which members of the public resort or have access, he may enter such place and may-

- (a) seize and remove any document, money or valuable thing, instrument or other thing whatsoever found in such place which he has reasonable cause for believing may be required as evidence for the purposes of proceedings in respect of any such contravention; and
- (b) arrest and, subject to the provisions of subsection (2), search any person found on the premises whom he has reasonable cause to believe to be committing, or to have committed, any such contravention.

(2) A person arrested by virtue of subsection (1)(b) shall be searched only by a person of the same sex as the person arrested.

(3) A person shall not wilfully delay or obstruct an officer of police in the exercise of his powers under subsection (1), or fail to produce, when required by the officer of police so to do, or conceal or attempt to conceal, any document, money or valuable thing, instrument or other thing to which subsection (1)(a) relates.

**Powers of the Chairman to grant warrant for entry in places to which the public does not have the right of access.**

18. (1) If the Chairman of the Court of Alderney is satisfied by information on oath given by an officer of police that there is reasonable ground to believe that in any place to which the public does not have the right of access any provision of this Law or of any Ordinance made thereunder is being, or has been, or is about to be, contravened, he may grant a warrant under his hand, by virtue whereof it shall be lawful for any officer of police who is named in the warrant at any time or times within one month from the date thereof, to

enter, if need be by force, any place specified in the warrant and there to do all or any of the acts set out in section 17(1)(a) and (b).

(2) A person arrested by virtue of subsection (1) shall be searched only by a person of the same sex as the person arrested.

(3) A person shall not wilfully delay or obstruct an officer of police in the exercise of his powers under subsection (1), or fail to produce, when required by the officer of police so to do, or conceal or attempt to conceal any document, money or valuable thing, instrument or other thing whatsoever to which section 17(1)(a) relates.

**Savings.**

**19.** (1) Nothing in this Law or in any Ordinance made thereunder shall apply to securities issued by the States of Alderney or the States of Guernsey or by or under the authority of Her Majesty's Government in the United Kingdom by reason of any use or proposed use of chance to select particular securities for special benefits, if the terms of the issue provide that the amount subscribed is to be repayable in full in the case of all the securities.

(2) Nothing in this Law or in any Ordinance made thereunder shall be taken to apply to the disposal by lot of any land, goods or other thing whatsoever under and in accordance with the law, whether customary or enacted, of the Island of Alderney.

(3) For the avoidance of doubt, nothing in this Law or in any Ordinance made thereunder shall be taken to render unlawful, void or unenforceable any otherwise lawful contract-

- (a) which is entered into by one or more of the parties thereto by way of business; and
- (b) the making or performance of which by any party thereto involves-
  - (i) dealing in any way with an investment, or

- (ii) making arrangements for another person to deal in any way with an investment, or
- (iii) offering to agreeing to deal, or to make such arrangements, in relation to an investment.

(4) For the purpose of subsection (3), "**investment**" means any corporeal or incorporeal property or right in the nature of an investment, whether or not a controlled investment within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, and specifically includes all instruments, transactions, rights and interests of a type for the time being described in Schedule 2.

(5) States may from time to time by Ordinance amend Schedule 2 so as to add any investment to, or delete any investment from, or vary the description of any investment within that Schedule.

#### **Interpretation.**

**20.** (1) In this Law, unless the context otherwise requires-

**"bookmaker"** means any person who-

- (a) whether on his own account or as servant or agent to any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or
- (b) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or conducts such operations,

so, however, that a person shall not be deemed to be a bookmaker by reason only of the fact that he operates, or is employed in operating, a totalisator, but does not include a licensed pool agent;

**"the Commission"** means the Alderney Gambling Control Commission;

**"the Committee"** means the Policy and Finance Committee;

**"contravention"**, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

**"gambling"** includes all forms of betting, gaming and wagering and any lottery and the expression **"gamble"** shall be construed accordingly;

**"game of chance"** includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport;

**"gaming"** means the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not, but does not include the making of bets by way of pool betting;

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller;

**"lawful gambling"** means any form of gambling made lawful by Ordinance under section 6;

**"licensed pool agent"** means a person who, in accordance with the provisions of an Ordinance made under the provisions of section 6, is authorised by way of business to distribute, collect or despatch within the Island of Alderney entry forms and entry fees relating to a pool betting competition promoted in the United Kingdom by a registered pool promoter;

**"money"** includes a cheque, banknote, currency note, postal order or money order;

**"pool betting"** means bets made by a number of persons-

- (a) on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons, whether the bets

are made by means of a totalisator, or by filling up and returning coupons or other printed or written forms, or in any other way; or

- (b) on terms that the winnings of such of those persons as are winners shall be, or shall include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners; or
- (c) on the basis that the winners or their winnings shall, to any extent, be at the discretion of the promoter or some other person;

**"officer of police"** means-

- (a) a member of the salaried police force of the Island of Guernsey and, within the limit of his jurisdiction, a member of the special constabulary of the Island of Guernsey; and
- (b) a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987<sup>1</sup>;

**"premises"** includes any place, whether enclosed or not;

**"registered pool promoter"** means a person who is a registered pool promoter for the purposes of the Betting, Gaming and Lotteries Act 1963<sup>2</sup>;

**"the States"** means the States of Alderney;

**"totalisator"** means the contrivance for betting known as the totalisator or pari mutuel, or any other machine or instrument of betting of a like nature, whether mechanically operated or not;

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Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, p. 83; No. IX of 1995; No. IV of 1996; and No. IV of 1998.  
An Act of Parliament (1963 c. 2).

**"winnings"** includes winnings of any kind and any reference to the amount or to the payment of winnings shall be construed accordingly;

**"young person"** means a person who has not attained the age of eighteen years.

- (2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>3</sup> shall apply to the interpretation of this Law as they apply in Guernsey to the interpretation of an enactment.

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Ordres en Conseil Vol. XIII, p. 355.

Ordres en Conseil Vol. XXV, p. 46.

Order in Council No. X of 1997.

(3) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

**Repeals.**

**21.** The Gambling (Alderney) Law, 1975<sup>4</sup> and the Gambling (Amendment) (Alderney) Law, 1997<sup>5</sup> are hereby repealed.

**Citation.**

**22.** This Law may be cited as the Gambling (Alderney) Law, 1999.

**Commencement.**

**23.** This Law shall come into operation on such date as the States may by Ordinance appoint, and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1

Section 1(2)

PROVISIONS AS TO THE ALDERNEY GAMBLING CONTROL  
COMMISSION

**1.** The Alderney Gambling Control Commission shall by that name be a body corporate with perpetual succession and a common seal, and be capable of suing and being sued in its corporate name.

**2.** The chairman and other members of the Commission shall hold office for a period of five years and vacate office as such in accordance with the terms of their appointments.

**3.** A person who ceases to hold office as a member of the Commission, or ceases to hold office as chairman, shall be eligible for reappointment.

**4.** The Commission may appoint such officers and servants as, after consultation with the Committee, the Commission may determine.

**5.** The States shall pay to the chairman and other members of the Commission such remuneration and allowances as they may determine.

**6.** The Commission shall pay to their officers and servants such remuneration and allowances as, after consultation with the Committee, the Commission may determine.

**6A.** (1) The Commission may from time to time by resolution arrange for any of its functions to be performed on its behalf by any officer or servant responsible to the Commission named or described in such resolution.

(2) A function performed by an officer or servant pursuant to a resolution made under this paragraph is for all purposes performed by the Commission; and every decision taken or other thing done by an officer or servant pursuant to such an arrangement has the same effect as if taken or done at a quorate meeting of the Commission.

(3) An arrangement under this paragraph for the performance of a function by an officer or servant-

(a) may be varied or terminated at any time by the Commission,

but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement;

(b) does not prevent the performance of the function by the Commission whilst the arrangement subsists.

(4) This paragraph has effect for the removal of any doubt and is not to be construed as impliedly invalidating anything done in accordance with the provisions of this Law or of any Ordinance made thereunder before or after the coming into force of this paragraph.

**7.** The Commission shall have power to regulate its own procedure.

**8.** The validity of any proceedings of the Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any such member.

SCHEDULE 2

Section 19 (4)

Without prejudice to the generality of section 19 (4), the following are within the scope of “investments” for the purposes of this Law-

- (a) shares in the share capital of a body corporate or an unincorporated body;
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging indebtedness of a body corporate, an unincorporated body, or a States, government or other public body or organisation;
- (c) units or other interests in a collective investment scheme, closed-ended limited partnership, or closed-ended unit trust;
- (d) rights under a contract of insurance;
- (e) rights under a contract for the deposit of a sum of money to be repaid with or without interest or premium;
- (f) rights under a contract for the credit secured on land;
- (g) rights under a contract for differences, or under any other contract the purpose or intended purpose of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract;
- (h) rights under a contract for the sale of any property (including currency) under which delivery is to be made at a future date and at a price agreed when the contract is made;

- (i) options to acquire or dispose of any property;
- (j) warrants, certificates or other instruments conferring ownership, subscription, acquisition, disposal, underwriting or conversion rights in respect of investments described in this Schedule:
- (k) other rights to, and other interest in, investments described in this Schedule.