

PROJET DE LOI

ENTITLED

The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. XII of 2009; as amended by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Single Euro Payments Area (Guernsey) Ordinance, 2016 (No. II of 2016); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Transfer of Funds (Alderney) Ordinance, 2017 (Alderney Ordinance No. III of 2017); the Transfer of Funds (Guernsey) Ordinance, 2017 (No. ** of 2017); the Transfer of Funds (Sark) Ordinance, 2017 (Sark Ordinance No. X of 2017); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015). This Law is prospectively amended by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (No. VI of 2017).

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The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008

THE STATES, in pursuance of their Resolution of the 30th October, 2008^a have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

REGULATION OF PRESCRIBED BUSINESSES

Preliminary

Application of Law to prescribed businesses.

1. (1) This Law applies to any prescribed business.

(2) A "**prescribed business**" means any business which is a relevant business for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b Law, but does not include –

(a) a business of a type described in paragraphs 2 ("High

^a Article VII on Billet d'État No. XIII of 2008.

^b Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; Order in Council No. XV of 2007; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; Ordinance XLVII of 2007; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007 ; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

value dealing") or 4 ("Casinos and organised gambling") of Schedule 2 to that Law, or

(b) a small business.

PART II

WINDING UP ETC OF REGISTERED PRESCRIBED BUSINESSES

Application of this Part.

2. This Part applies to any person carrying on a registered prescribed business.

Winding up and injunctions.

3. (1) A court may –

(a) make an order for the winding up –

(i) in accordance with the Companies (Guernsey) Law, 2008^c, of a Guernsey company, or

(ii) in accordance with the Companies (Alderney) Law, 1994^d, of an Alderney company,

which is carrying on a registered prescribed business in the Bailiwick, or

(b) grant an injunction prohibiting a person who is, or has

^c Order in Council No. VIII of 2008.

^d Order in Council No. XXXIV of 1994; amended by No. I of 2001 and No. XV of 2002.

been, carrying on a registered prescribed business from carrying on that business in the Bailiwick,

on any of the grounds referred to in subsection (2).

- (2) The grounds are –
 - (a) that the person carrying on the registered prescribed business has –
 - (i) contravened in a material particular any provision of, or made under –
 - (A) this Law, or
 - (B) any of the relevant enactments, or
 - (ii) committed an offence under such a provision, in respect of that business, or
 - (b) that the winding up, or grant of an injunction, appears to be necessary in order to counter –
 - (i) financial crime, or
 - (ii) the financing of terrorism, in the Bailiwick, or elsewhere.
- (3) An application under subsection (1) for –

- (a) the winding up of a company, or
- (b) the grant of an injunction,

may only be made to a court by the Commission.

(4) For the purposes of this section, "**court**" means –

(a) in the case of an application for –

- (i) the winding up of a Guernsey company, or
- (ii) the grant of an injunction in respect of –

(A) a Guernsey company, or

(B) a person carrying on a registered prescribed business in Guernsey,

the Royal Court,

(b) in the case of an application for –

- (i) the winding up of an Alderney company, or
- (ii) the grant of an injunction in respect of –

(A) an Alderney company, or

(B) a person carrying on a registered

prescribed business in Alderney,

the Court of Alderney, and

- (c) in the case of an application for the grant of an injunction in respect of a person carrying on a registered prescribed business in Sark, the Court of the Seneschal.

(5) The provisions of this section are without prejudice to the Royal Court's powers under section 410 of the Companies (Guernsey) Law, 2008.

PART III

SUPPLEMENTARY MATTERS

Appeals

Appeals against decisions of Commission.

- 4. (1) A person aggrieved by a decision of the Commission –
 - (a) to impose a requirement under section 5,
 - (b) to appoint an inspector under section 6,
 - (c) to serve a notice on him under sections 17 and 18,
 - (d) to issue a private reprimand under section 12,
 - (e) to issue a discretionary financial penalty under section 13, or

- (f) to issue a public statement under section 14,

may appeal to the Court against the decision.

- (2) The grounds of an appeal under this section are that –
 - (a) the decision was *ultra vires* or there was some other error of law;
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.

- (3) An appeal under this section shall be instituted –
 - (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
 - (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

(5) On an appeal under this section the Court may –

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision described in subsection (1)(c) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) In this section, "**the Court**" means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(8) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) shall lie to the Court of Appeal on a question of law.

Power of Commission to obtain information

Power to request and obtain information and documents.

5. (1) The Commission may, by notice in writing served on a registered prescribed business, require it to provide the Commission –

- (a) at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions,
- (b) with a report, in such form as may be specified in the notice, by a person who has relevant professional skill and who is nominated or approved by the Commission, on or on any aspect of any matter in relation to which the Commission may require information under paragraph (a).

(2) The Commission may, by notice in writing served on a registered prescribed business –

- (a) require it to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,
- (b) require it to furnish forthwith, to any of the Commission's officers, servants or agents authorised for

the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

being information or documents reasonably required by the Commission for the performance of its functions.

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a registered prescribed business, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The power conferred by this section to require a person to produce any documents includes power –

(a) if the documents are produced, to take copies of them or extracts from them and to require –

(i) that person, or

(ii) any other person who is a present or past director, controller, partner, senior officer or beneficial owner of that prescribed business,

to provide an explanation of them, and

(b) if the 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.

(5) If it appears to the Commission to be desirable to do so for the protection of the public or the protection and enhancement of the reputation of the Bailiwick, the Commission may also exercise the powers conferred by this section in relation to any person who is or has at any relevant time been an associated party of the prescribed business.

(6) The foregoing provisions of this section shall apply in relation to a former registered prescribed business as they apply in relation to a registered prescribed business, but only, unless the Commission directs otherwise in any particular case, for a period of 6 years immediately after the date on which the former registered prescribed business ceased to be registered.

(7) The Commission may exercise the powers conferred by subsections (1) to (4) in relation to, where the prescribed business is a company, any person who is a significant shareholder of the prescribed business if the Commission considers that it is desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick.

(8) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence.

(9) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him in any criminal proceedings except –

- (a) in proceedings for an offence under subsection (8), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(10) A statement may not be used by virtue of subsection (9)(b) against a person unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(11) A notice under subsection (1), (2) or (3) shall give particulars of the right of appeal conferred by section 4.

Investigations by inspectors.

6. (1) The Commission may, in relation to any registered prescribed business if it considers it desirable to do so for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick, appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on the compliance of the prescribed business in question with any provision of, or made under, this Law or any of the relevant enactments and the Commission shall give notice in writing of the appointment to the business concerned.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any person who is or has at any relevant time been an associated party of the prescribed business under investigation.

(3) An inspector may not investigate the business of a party under subsection (2) unless and until the Commission has given notice in writing to that party of the proposed investigation.

(4) A prescribed business or party being investigated under subsection (1) or (2) and any person who is or has been a director, controller, partner, senior officer, employee or agent of a prescribed business or party being so investigated, or who is or has been a significant shareholder in relation to such a prescribed business or party –

(a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that prescribed business or party; and the inspector may take copies of or extracts from any documents produced to him under this paragraph,

(b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that prescribed business or party, and

(c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.

(5) An inspector shall, if so required, produce evidence of his authority.

(6) A person who without reasonable excuse –

(a) fails to comply with any provision of subsection (4), or

(b) obstructs, fails to comply with any requirement of or fails to give all reasonable assistance to an inspector exercising or purporting to exercise any right conferred

by this section,

is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except –

- (a) in proceedings for an offence under subsection (6), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) A statement may not be used by virtue of subsection (7)(b) against a person unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(9) Subject to the provisions of subsection (10), if the Commission so determines, the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the prescribed business, the compliance of which is being investigated under subsection (1); and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that prescribed business as a civil debt.

(10) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the

Commission from a prescribed business as a civil debt where the court is satisfied that –

- (a) the sum is not reasonable in amount or was not reasonably incurred, or
- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

(11) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 4.

(12) The provisions of this section apply in relation to a former registered prescribed business as they apply in relation to a registered prescribed business, but only in connection with the compliance of the former registered prescribed business at a time when it was registered.

Investigation of suspected offences.

7. (1) Where the Commission has reasonable grounds for suspecting that a person has committed an offence under any of the relevant enactments, the Commission may by notice in writing require that person or any other person –

- (a) to furnish, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information, documents or description of documents as may be specified and as may reasonably be required for the purpose of investigating the suspected offence,
- (b) to attend at such place and time as may be specified in the notice and answer questions relevant for

determining whether such an offence has been committed.

(2) An officer, servant or agent of the Commission may, on production if required of evidence of his authority –

- (a) take copies of or extracts from, and require an explanation of, any document furnished in accordance with the requirements of a notice under subsection (1),
- (b) in the case of any document which is not furnished as required by a notice under subsection (1), require the person on whom the notice was served to state to the best of his knowledge and belief the whereabouts of that document.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice under subsection (1) or obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any right conferred by subsection (2) is guilty of an offence.

(4) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except –

- (a) in proceedings for an offence under subsection (3), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(5) A statement may not be used by virtue of subsection (4)(b)

against a person unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(6) A notice under subsection (1) shall give particulars of the right of appeal conferred by section 4.

Power of Bailiff to grant warrant.

8. (1) If the Bailiff (within the meaning of subsection (4)) is satisfied by information on oath –

- (a) that a notice has been served under section 5 on any person and that there are reasonable grounds for suspecting –
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
 - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 5, or
 - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii),

- (b) that it is not practicable to serve a notice under section 5, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 9.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 6 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

- (a) that an offence under this Law has been committed in relation to the investigation,
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation, or
- (c) that, if a warrant were not granted –
 - (i) any documents which the inspectors wish or

might wish to inspect would be removed,
tampered with or destroyed, or

- (ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 9.

(3) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has committed an offence under any of the relevant enactments and that –

- (a) a person has failed to comply with any requirement of a notice under section 7(1) or any other requirement imposed by or under section 7,
- (b) there are reasonable grounds for suspecting the accuracy or completeness of any information or documents furnished pursuant to such a notice or requirement,
- (c) it is not practicable to serve a notice under section 7(1),
or
- (d) there are reasonable grounds for suspecting that if such a notice were served –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or

- (iii) the service of the notice might seriously prejudice the investigation of the suspected offences,

he may grant a warrant conferring the powers set out in section 9.

- (4) In this section the expression "**Bailiff**" means –
 - (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
 - (b) where the warrant is to be executed in Sark, the Seneschal or his deputy,
 - (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff, Judge of the Royal Court or Juge Délégué.

Powers conferred by Bailiff's warrant.

9. (1) A warrant granted under section 8(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the person upon whom the notice under section 5 was or could be served,

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(ii) upon which the documents to which the notice under section 5 relates are reasonably believed to be, or

(iii) where no notice under section 5 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents-

(i) which were required by the notice under section 5, or

(ii) where no notice under section 5 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 5,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

- (i) to answer any questions which could have been put to him under section 5,
- (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
- (iii) to make an explanation of any such documents.

(2) A warrant granted under section 8(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the prescribed business or other person being investigated by inspectors under section 6, or
 - (ii) upon which any documents to which the investigation under section 6 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 6, to take possession of

them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer any questions relevant to the investigation under section 6,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) A warrant granted under section 8(3) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the person upon whom the notice under section 7(1) was served,
 - (ii) upon which there are reasonably believed to be the documents to which the notice under section 7(1) relates, or

- (iii) where no notice under section 7(1) has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of investigating the suspected offence, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer questions relevant for determining whether he or any other person has committed an offence under this Law,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(4) A warrant granted under section 8 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(5) Any documents of which possession is taken under the powers conferred by a warrant granted under section 8 may be retained –

(a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

(b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(6) A person who, without reasonable excuse, obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 8, is guilty of an offence.

(7) A statement made by a person in response to a requirement imposed under a warrant granted under section 8, may not be used in evidence against him in any criminal proceedings except –

(a) in proceedings for an offence under subsection (6), or

(b) in proceedings for some other offence where, in giving evidence, he makes a statement inconsistent with it.

(8) A statement may not be used by virtue of subsection (7)(b) against a person unless –

(a) evidence relating to it is adduced, or

- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

Legal professional privilege, liens and duties of confidentiality.

- 10. (1) Nothing in –

- (a) section 5, 6 or 7, or

- (b) a warrant granted under section 8,

shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of any client.

- (2) Where a person claims a lien on a document, its production under –

- (a) section 5, 6 or 7, or

- (b) a warrant granted under section 8,

is without prejudice to his lien.

- (3) A requirement imposed by or under –

- (a) section 7, 8 or 9, or

- (b) a warrant granted under section 8,

shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Falsification, etc, of documents during investigation.

11. A person upon whom a notice under section 5 or 7 has been served or who knows or has reasonable grounds to suspect –

- (a) that such a notice is likely to be served on him, or
- (b) that an inquiry or investigation is being or is likely to be carried out under section 5, 6 or 7,

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect –

- (i) would be inspected or requested during such a site visit or are or would be relevant thereto,
- (ii) are or would be specified in such a notice, or
- (iii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be, from the persons carrying out such a site visit, inquiry or investigation.

Enforcement powers

Power to issue private reprimand.

12. (1) Without prejudice to any other powers of the Commission, where the Commission considers that it is appropriate to do so, having regard to compliance with any provision of, or made under, this Law or any of the relevant enactments, a registered prescribed business or any person who is a director, controller, partner, senior officer or beneficial owner of a registered prescribed business, the Commission may, subject to the provisions of section 4, issue to the prescribed business a private reprimand.

(2) Where the Commission decides to issue a private reprimand, the Commission shall serve on the prescribed business in question notice in writing of the decision.

(3) A private reprimand issued under subsection (1) may be taken into account by the Commission in considering any matter under this Law concerning the prescribed business in question.

Power to issue discretionary financial penalties.

13. (1) Without prejudice to any other powers of the Commission, where the Commission considers that a registered prescribed business or any person who is a director, controller, partner, senior officer or beneficial owner of a registered prescribed business, has contravened or not fulfilled in a material particular a provision of, or made under, this Law or any of the relevant enactments, the Commission may, subject to the provisions of section 4, impose on him a penalty in respect of the contravention or non-fulfilment of such amount not exceeding £200,000 as it considers appropriate.

(2) In deciding whether or not to impose a penalty under this section and, if so, the terms thereof the Commission must take into consideration the following factors –

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including clients and creditors of that person, of publishing a statement, and
- (f) the penalties imposed by the Commission under this section in other cases.

(3) Where a penalty is imposed on a person under this section, the Commission may publish his name and the amount of the penalty

Power to issue public statements.

14. (1) Without prejudice to any other powers of the Commission, where the Commission considers that, a registered prescribed business or any person who is a director, controller, partner, senior officer or beneficial owner of a registered prescribed business has contravened or not fulfilled in a material particular a provision of, or made under, this Law or any of the relevant enactments, the Commission may, subject to the provisions of section 4 publish a statement to that

effect.

(2) In deciding whether or not to publish a statement under this section and, if so, the terms thereof the Commission must take into consideration the following factors –

- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention or non-fulfilment,
- (c) whether or not the contravention or non-fulfilment was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including clients and creditors of that person, of publishing a statement, and
- (f) the action taken by the Commission under this section in other cases.

Disqualification orders.

15. (1) Where the Royal Court ("**the Court**") considers that a person has contravened in a material particular any provision of, or made under, this Law or any of the relevant enactments, or has committed an offence under such a provision, the Court may, if satisfied that it is desirable in the public interest to do so, make and

subsequently renew (on one or more occasions) an order against him (a "**disqualification order**") prohibiting him, without the leave of the Court –

- (a) from being a director, controller, partner or senior officer of any, or any specified, prescribed business, or
- (b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any or any specified, prescribed business.

(2) A disqualification order and any renewal thereof shall have effect for such period not exceeding 15 years as shall be specified therein.

(3) A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(4) An application for a disqualification order or for a renewal thereof may be made by the Commission, by Her Majesty's Procureur, by any prescribed business of which the person in question is, or has been, a director, controller, partner or senior officer, by any liquidator, member or creditor of such a prescribed business or, with the leave of the Court, by any other interested party.

(5) A person who contravenes any provision of a disqualification order or a renewal thereof –

- (a) shall be guilty of an offence, and
- (b) shall be personally liable for any debts and liabilities of the prescribed business in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the

disqualification order or the renewal thereof.

(6) A person's liability under subsection (5)(b) is joint and several with that of the prescribed business and of any other person so liable in relation to that prescribed business.

(7) A disqualification order may be renewed at any time before, or within a period of one month immediately succeeding, the date of the expiration of the order.

(8) A person subject to a disqualification order or renewal thereof may apply to the Court for a revocation of the order or renewal on the ground that any contravention in a material particular of any provision of, or made under, this Law or any of the relevant enactments in relation to a prescribed business has been remedied; and the Court may grant the application if satisfied that –

- (a) it would not be contrary to the public interest to do so, and
- (b) any contravention in a material particular of any provision of, or made under, this Law or any of the relevant enactments, in relation to a prescribed business, has been remedied.

(9) An application under subsection (8) for the revocation of a disqualification order or renewal shall not be heard unless the person upon whose application the disqualification order or (as the case may be) the renewal was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and
- (b) for that purpose adjourn the hearing of the application.

(10) For the removal of doubt, a disqualification order or renewal thereof, or an application under subsection (8) for the revocation of a disqualification order or renewal, may, with the agreement of the parties, and in the Court's absolute discretion, be granted by consent.

(11) The provisions of this section are without prejudice to the Court's powers under Part XXV of the Companies (Guernsey) Law, 2008.

Injunctions to restrain unlawful business, etc.

16. (1) If on the application of the Commission or, with the leave of the Court, any other person, the Court is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene any provisions of this Law or regulation 16(1) of the prescribed business money laundering regulations, or
- (b) a person may have contravened any provision of this Law or regulation 16(1) of the prescribed business money laundering regulations and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

(2) If on the application of the Commission the Court is satisfied that a person may have contravened any provisions of this Law, the Court may grant an injunction restraining him or any of his associates or controllers from disposing of or otherwise dealing with any assets or class or description of assets while the suspected contravention is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

(4) An application by the Commission for an injunction under this section may, with the approval of the Court, and on such terms as the Court may direct, be made *ex parte*.

(5) In this section "**the Court**" means –

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal,

(b) in any other case, the Royal Court.

(6) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform

(Miscellaneous Provisions) (Guernsey) Law, 1987^e, and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

NOTE

The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 (the "prescribed business money laundering regulations") have since been revoked by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

Notice of decisions

Notice of intended decision.

17. (1) Where the Commission proposes to make a decision in respect of which a right of appeal is conferred by section 4 it shall serve on the person concerned a notice in writing –

- (a) stating that the Commission is proposing to make the decision,
- (b) stating the terms of, and the grounds for, the proposed decision,
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the Commission

^e Ordres en Conseil Vol. XXX, p. 145.

may from time to time determine, and

- (d) giving particulars of the right of appeal which would be exercisable under section 4 if the Commission were to make the decision.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed decision.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick.

If by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then the procedure prescribed in this section may be dispensed with altogether.

- (4) For the avoidance of doubt –
 - (a) a notice about a proposal to publish a statement must set out the terms of the statement, and
 - (b) a notice about a proposal to impose a financial penalty must state the amount of the penalty.

Notice of decision.

18. Where the Commission decides (having taken into account, where appropriate, any representations made by the person concerned) to make a decision in

respect of which a right of appeal is conferred by section 4 it shall serve on the person concerned notice in writing of the decision –

- (a) stating the terms of, and the grounds for, the decision and
- (c) giving particulars of the right of appeal conferred by section 4.

Disclosure of reasons for decisions.

19. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 4, the person concerned may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the decision.

(2) Subsection (1) does not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to –

- (a) a criminal investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place, or
- (c) a third party (wherever situated).

(3) Where, pursuant to subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 4.

Disclosure of information

Restrictions on disclosure of information.

20. (1) Subject to the provisions of section 21, and without prejudice to the provisions of section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 –

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

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

(2) A person who discloses information in contravention of this section is guilty of an offence.

Cases where disclosure is permitted.

21. Section 20 does not preclude –

- (a) the disclosure of –
 - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
 - (ii) information 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,

- (b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law,
- (c) without prejudice to the generality of paragraph (b), where, in order to enable or assist it to discharge its functions conferred by or under this Law, or the relevant enactments, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,
- (d) the disclosure by the Commission of information for the protection of the public or for the protection or enhancement of the reputation of the Bailiwick,
- (e) the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority in a country outside the Bailiwick to exercise its functions,
- (f) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any of the provisions of, or made under, this Law,

- (g) the disclosure of information –
 - (i) for the purposes of the investigation, prevention or detection of crime, or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,whether under this Law or otherwise,
- (h) the disclosure of information in connection with any other proceedings arising out of any of the provisions of, or made under, this Law,
- (i) the disclosure by the Commission to Her Majesty's Procureur or an officer of police of information obtained under section 6 or 7 or information in the possession of the Commission as to any suspected offence in relation to which the powers conferred by those sections are exercisable, or
- (j) where information is disclosed to an officer of police under paragraph (i), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere.

PART IV

GENERAL PROVISIONS

Criminal proceedings

Offences as to false or misleading information, etc.

22. (1) If a person –

- (a) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, this Law, or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by or under this Law,

does any of the following –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) A prescribed business, or any director, controller, partner, senior officer or beneficial owner of a prescribed business, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe –

- (a) that the information is relevant to the exercise by the Commission of its functions under this Law in relation to the prescribed business, and
- (b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the prescribed business,

is guilty of an offence.

Penalties.

23. (1) A person or body guilty of an offence under section 22(2) is liable –

- (a) on conviction on indictment, to a fine,

- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(2) A person or body guilty of an offence under any other provision of this Law is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(3) In relation to offences tried before the Court of Alderney or the Court of the Seneschal, the penalties stipulated by subsections (1)(b) and (2)(b) are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004^f and section 11 of the Reform (Sark) Law, 2008^g.

(4) Where an offence under this Law involves a public display or exhibition of any name or description, there is a fresh offence on each day on which the display or exhibition continues.

Criminal proceedings against unincorporated bodies.

24. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

^f Ordres en Conseil No. III of 2005.

^g Order in Council No. V of 2008.

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members and, for the purpose of such proceedings, the service of any document (including any summons) on that body shall be carried out in accordance with the provisions of section 39.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of that body.

Criminal liability of directors, etc.

25. (1) Where an offence under this Law is committed by a company 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, controller, partner, senior officer or beneficial owner or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company 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.

26. In proceedings for an offence under this Law it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

Jurisdiction.

27. Without prejudice to any jurisdiction exercisable apart from this section, proceedings for an offence under this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

Liability of States etc.

Exclusion of liability.

28. No liability shall be incurred –

- (a) by, or by any department of, the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
- (b) by the Commission, or
- (c) by any member, officer or servant of any body mentioned in paragraph (a) or (b),

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under

this Law, unless the thing is done or omitted to be done in bad faith.

Miscellaneous

Service of notices and documents.

29. (1) Any document other than a summons to be given or served under any of the provisions of, or made under, this Law may be given to or served upon –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a company with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) a company without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick,
- (d) an unincorporated body, by being given to or served on any partner, member of the committee or other similar governing body, manager or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal

or last known principal place of business elsewhere,

- (e) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in the Bailiwick,

and in this section –

- (i) the expression "**by post**" means by special delivery, recorded delivery or ordinary letter post,
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication, in which event the document shall be regarded as served when it is received, and
- (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.

(2) If a person notifies the Commission of an address for service within the Bailiwick for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being

published on two occasions, the second of which occurs at least 14 days after the first, in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Commission or its Chairman under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the notice or document shall be served on his guardian, and if there is no guardian, the Commission (or, with leave of the Court, any other person) may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law, and in this subsection "**the Court**" means –

(a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal,

(b) in any other case, the Royal Court.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of

Man, on the third day after the day of posting,

- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^h.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

Verification of information.

30. The Commission may direct that any information, document or statement provided to it in compliance or purported compliance with any requirement imposed by or under any provision of, or made under, this Law shall be verified in such manner as the Commission may reasonably specify, and any information, document or statement which is not verified in accordance with a direction given under this section shall be deemed for the purposes of that provision not to have been provided in accordance with the said requirement and the said requirement shall accordingly be deemed not to have been complied with.

Evidence.

31. (1) In any proceedings, a certificate signed on behalf of the Commission and certifying –

- (a) that a particular person or body is or is not a registered prescribed business or was or was not a registered prescribed business at a particular time,

^h Ordres en Conseil Vol. XVII, p. 384, Vol. XXIV, p. 84, No. XI of 1993, and No. XIV of 1994.

- (b) the date on which a particular prescribed business obtained or ceased to hold a registration,
- (c) the terms of any conditions imposed in respect of a particular registration,

is admissible in evidence.

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

Interpretation.

32. (1) In this Law, unless the context requires otherwise –

"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 an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media,

"advocate" means an Advocate of the Royal Court of Guernsey,

"Alderney company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994,

"associate", in relation to any person, means –

- (a) the spouse, child or stepchild of that person,
- (b) any person who is an employee of, or who is in

partnership with, that person,

- (c) any body of which that person is a director,
- (d) where that person is a company –
 - (i) any director or employee of that company,
 - (ii) any subsidiary of that company, and
 - (iii) any director or employee of any such subsidiary,
- (e) where that person is an unincorporated body, any director of that body,
- (f) if that person has with some other person an agreement or arrangement as to the acquisition, holding or disposal of shares or other interests in a company or under which they undertake to act together in exercising their voting power in relation to a company, that other person,

"associated party", in relation to any person, means –

- (a) any person who is in partnership with that person,
- (b) any company of which that person is a controller,
- (c) any body of which that person is a director,

- (d) where that person is a company –
 - (i) a holding company, subsidiary or related company of that person,
 - (ii) a subsidiary or related company of a holding company of that person,
 - (iii) a holding company of a subsidiary of that person, or
 - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting,

and where, under the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body is an associated party in relation to that first-mentioned person or body,

"Bailiwick" means the Bailiwick of Guernsey,

"beneficial owner" means, in relation to a business relationship or occasional transaction –

- (a) the natural person who ultimately owns or controls the client, and
- (b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted

and, in the case of a trust or other legal arrangement, this shall mean –

- (i) any beneficiary in whom an interest has vested, and
- (ii) any other person who appears likely to benefit from that trust or other legal arrangement,

"body" includes a body incorporated under the law of any State or territory and any unincorporated body,

"business" includes any trade, profession or economic activity, whether or not carried on for profit,

"business relationship" means a continuing arrangement between the prescribed business in question and another party, to facilitate the carrying out of transactions, in the course of such prescribed business –

- (a) on a frequent, habitual, or regular basis, and
- (b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement,

"carrying on" business: see section 34,

"chief executive", in relation to a body, means a person who, alone or jointly with other persons, is responsible under the immediate authority of the directors for the conduct of the business of the body and, in relation to a body whose principal place of business is outside the Bailiwick, includes a person

who, alone or jointly with other persons, is responsible for the conduct of its business in the Bailiwick,

"the Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987ⁱ,

"company" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world, and includes a Guernsey company and an Alderney company,

"contract of employment" means a contract of service or apprenticeship, or a contract personally to execute any work or labour, whether express or implied and whether written or oral,

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

"controller", in relation to a company, means

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller,

ⁱ Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; Nos. XVII and XXI of 2002; No. XXII of 2003; No. III of 2003; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).

"country" includes any territory or other place,

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961^j,

"Court of the Seneschal" means the Court of the Seneschal of Sark,

"director" includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes –

- (a) the chief executive or any member of the committee or other similar governing body, and
- (b) any person in accordance with whose directions or instructions any director is accustomed to act,

"documents" includes information recorded in any form (including, without limitation, in an electronic form) and –

- (a) in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form,
- (b) without prejudice to paragraph (a), references to the production of documents, howsoever expressed, include (without limitation) references to the production of a copy thereof in the English language,

^j Ordres en Conseil Vol. XVIII. p. 315.

"employee" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment and cognate expressions shall be construed accordingly,

"equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

"group" in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company,

"Guernsey company" means a body corporate on the Register of Companies kept and maintained under section 496 of the Companies (Guernsey) Law, 2008,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"holding company" has the meaning given in the Schedule,

"indirect controller", in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act,

"inspector" means a person appointed by the Commission under section 7,

"manager" in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief

executive of the company –

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the company,

"money laundering reporting officer" has the meaning given in the prescribed business money laundering regulations,

"officer of police" means a member of the salaried police force of the Island of Guernsey, any officer of customs and excise within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^k and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, 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 47 of the Government of Alderney Law, 2004,
- (c) in relation to Sark, the Constable and the Vingtenier,

"partnership" has the meaning given by section 1 of the Partnership

^k Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004; and the Excise Duties (Budget) Ordinance, 2005 (No. XXXII).

(Guernsey) Law, 1995^l, and cognate expressions shall be construed accordingly,

"person" includes a body of persons (whether a company or an unincorporated body),

"[Policy & Resources Committee]" means the States of Guernsey [Policy & Resources Committee],

"prescribed business": see sections 1(2) and 33,

"prescribed business money laundering regulations" means the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008,

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of the Protected Cell Companies Ordinance, 1997^m,

"the public" includes any section of the public, however selected, in the Bailiwick or elsewhere, including, in relation to a body, a section selected as members, debenture holders, policyholders, depositors or investors of, in or with that body;

"registered" means registered by the Commission under the prescribed business money laundering regulations and related expressions shall be construed accordingly,

^l Order in Council No. VIII of 1995.

^m Ordinance No. V of 1997; amended by No. XV of 1998; No. XXI of 2005; and No. XVII of 2006.

"registration" means a registration granted under regulation 16 of the prescribed business money laundering regulations

"regulated business" has the meaning given by Part II of Schedule 1 to the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,

"related company" in relation to the company in question, means any company (other than one which is a group company in relation to the company in question) in which the company in question holds for a significant period a qualifying capital interest for the purpose of securing a contribution to the company in question's own activities by the exercise of any control or influence arising from that interest, and for the purposes of this Law –

- (a) a **"qualifying capital interest"** means, in relation to any company, an interest in shares comprised in the equity share capital of that company of a class carrying rights to vote in all circumstances at general meetings of that company,
- (b) where –
 - (i) a company holds a qualifying capital interest in another company, and
 - (ii) the nominal value of any relevant shares in that other company held by the first-mentioned company is equal to 20% or more of the nominal value of all relevant shares in that other company,

the first-mentioned company shall be presumed to hold that interest on the basis and for the purpose mentioned above, unless the contrary is shown, and

- (c) in paragraph (b) "**relevant shares**" means, in relation to any company, any such shares in that company as are mentioned in paragraph (a),

"relevant enactments" means –

- (a) the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995ⁿ,
- (b) the Money Laundering (Disclosure of Information) (Alderney) Law, 1998^o,
- (c) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^p,
- (d) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^q,

ⁿ Order in Council No. IV of 1995.

^o Order in Council No. VII of 1998.

^p Order in Council No. VIII of 1999; Order in Council No. II of 2005; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007; Ordinance XXVIII of 1999, Ordinance XII of 2002, Ordinance XXXIII of 2003; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007; the Criminal Justice (Proceeds of Crime) Regulations, 2007.

^q Order in Council No. VII of 2000; No. II of 2005; and Ordinance No. XXXIII of 2003; the Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2007.

- (e) the Money Laundering (Disclosure of Information) (Sark) Law, 2001^r,
- (f) the Terrorism (United Nations Measures) (Channel Islands) Order 2001,
- (g) the Al-Qaida and Taliban (United Nations Measures) (Channel Islands) Order 2002,
- (h) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^s,
- (i) the Disclosure (Bailiwick of Guernsey) Law, 2007^t,
- (j) the [Transfer of Funds (Guernsey) Ordinance, 2017],
- (k) the [Transfer of Funds (Alderney) Ordinance, 2017],
- (l) the [Transfer of Funds (Sark) Ordinance, 2017], and
- [(la) the Single Euro Payments Area (Guernsey) Ordinance, 2016,]
- (m) such other enactments relating to money laundering and terrorist financing as may be enacted or made from time

^r Order in Council No. XXXII of 2001.

^s Order in Council No. XVI of 2002; amended by Order in Council No. XIII of 2006 and by Ordinance XXXIII of 2003.

^t Order in Council No. XVI of 2007.

to time in respect of the Bailiwick or any part thereof,

"relevant supervisory authority", in relation to a country outside the Bailiwick, means an authority discharging in that place functions corresponding to any functions of the Commission under this Law, under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 or under the relevant enactments,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"senior officer" includes, without limitation, a manager and a money laundering reporting officer,

"shareholder controller" –

- (a) in relation to a company, and subject to paragraph (b), means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,
- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company,

"significant shareholder" in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 5% or more but less than 15% of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

"small business" means –

- (a) a business in respect of which the total turnover of the person carrying on the business does not exceed £50,000 per annum,
- (b) where the business –
 - (i) if it is an estate agent, does not hold deposits, or
 - (ii) if it is a business other than an estate agent, does not carry out occasional transactions, that is to say any transactions involving more than £10,000 carried out by the business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,
- (c) the services of the business are provided only to customers resident in the Bailiwick, and
- (d) the funds received by the business are drawn on a bank operating from or within the Bailiwick,

"States" means the States of Guernsey,

"subsidiary company" has the meaning given in the Schedule and **"subsidiary"** has the same meaning as subsidiary company, and

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^W.

(2) Unless the context otherwise requires, references in this Law to the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark are references to the committees of those islands for the time being performing the functions respectively conferred by or under this Law on the said Policy and Finance Committee or (as the case may be) the said [Policy and Finance Committee].

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender include the masculine and the feminine, and any words importing the masculine gender include the feminine and the neuter.

(5) The Interpretation (Guernsey) Law, 1948^X applies to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 32,

the words in the first and second pairs of square brackets in the definition of the expression "Policy & Resources Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of

^W Ordres en Conseil Vol. XXXI, p. 278; Ordinance No. XXIX of 2006.

^X Ordres en Conseil Vol. XIII, p. 355.

Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016;

the words in square brackets in, first, paragraph (j), second, paragraph (k) and, third, paragraph (l) of the definition of the expression "relevant enactments" in subsection (1) were substituted by, respectively, the Transfer of Funds (Guernsey) Ordinance, 2017, section 14(1), Schedule 2, paragraph 9, the Transfer of Funds (Alderney) Ordinance, 2017, section 14(1), Schedule 2, paragraph 9, and the Transfer of Funds (Sark) Ordinance, 2017, section 14(1), Schedule 2, paragraph 9, with effect from 26th June, 2017;

paragraph (la) of the definition of the expression "relevant enactments" in subsection (1) was inserted by the Single Euro Payments Area (Guernsey) Ordinance, 2016, section 63(8), with effect from 27th January, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (2) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Protected Cell Companies Ordinance, 1997 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(l), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the

Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 have since been revoked by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, section 2, with effect from 31st March, 2019, subject to the transitional and saving provisions in section 3 of the 2018 Ordinance.

References to prescribed businesses.

33. References in this Law to a prescribed business (however expressed) include references to a person carrying on such a business.

"Carrying on" business.

34. (1) For the purposes of any provision of, or made under, this Law or the relevant enactments, except to the extent that in any particular case the Commission may otherwise direct, a business holds itself out as carrying on business in or from within the Bailiwick if –

- (a) by way of business it occupies premises in the Bailiwick or makes it known by an advertisement or by an insertion in a directory or by means of letterheads that it may be contacted at a particular address in the Bailiwick,
- (b) it invites a person in the Bailiwick, by issuing an advertisement or otherwise, to enter into or to offer to enter into a contract or otherwise to undertake business, or
- (c) it is otherwise seen to be carrying on business in or from within the Bailiwick.

(2) For the purposes of this section an advertisement issued or other invitation made by any person on behalf of or to the order of another person shall be treated as an advertisement issued or other invitation made, as the case may be, by that other person.

Provision as to publication of notices in Alderney and Sark and on Commission's website.

35. (1) If, pursuant to any requirement imposed by or under this Law, any document or information is published in La Gazette Officielle –

- (a) a copy of the document or information shall be published in the Alderney Official Gazette, and
- (b) a copy of the document or information shall be sent or delivered to the Seneschal of Sark who shall forthwith cause a copy of the document or information to be inserted in the Sark notice box.

(2) Any requirement imposed on the Commission by or under this Law to publish any document or information in La Gazette Officielle shall be construed as including a requirement to publish that document or information on the Commission's official web site.

Citation.

36. This Law may be cited as the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008.

Commencement.

37. This Law shall come into force on the day of its registration on the Records of the Island of Guernsey.

NOTES

The Law was registered on the Records of the Island of Guernsey on 11th May, 2009.

Meaning of "holding company" and "subsidiary company".

1. For the purposes of any provision of, or made under, this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

- (a) that other –
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital, or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power,

- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable –
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust instrument for securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

4. For the purposes of any provision of, or made under, this Law a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

¹ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.