

## **THE BENEFICIAL OWNERSHIP OF LEGAL PERSONS (GUERNSEY) LAW, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

### **EXPLANATORY MEMORANDUM**

The Law establishes the Office of the Registrar of Beneficial Ownership of Legal Persons, sets out the powers and functions of the Registrar, and imposes new duties on beneficial owners of legal persons and resident agents relating to the provision of information. The Law also makes appropriate amendments to the "relevant legal person Laws" – ie the Companies (Guernsey) Law, 2008, the Limited Liability Partnerships (Guernsey) Law, 2013 and the Foundations (Guernsey) Law, 2012 – and makes amendments to other legislation to ensure that the Guernsey Financial Services Commission has appropriate supervisory powers in respect of persons it regulates.

Part 1 of the Law establishes the Office of the Registrar and sets out the Registrar's functions. Part 2 sets out the duties of resident agents and beneficial owners to collect and disclose information. These duties expand on existing duties in the relevant legal persons Laws (eg Part XXIX of the Companies Law). The duties are enforced by a civil penalties regime and, in respect of resident agents, criminal offences. Part 3 amends the existing resident agent and beneficial ownership provisions in the relevant legal person Laws, making them consistent with the duties under Part 2 and the functions of the Registrar. Part 4 is concerned with the enforcement of the provisions, including a range of flexible civil sanctions consistent with those in the Companies Law, such as the power to issue private reprimands. The general provisions at Part 5 include providing for the meaning of 'beneficial owner' and related expressions to be defined by regulations.

Schedule 1 makes standard provision in respect of the Office of the Registrar. Schedule 2 sets out in more detail the general powers of the Registrar to disclose, and obtain, information, as well as the duty on him to keep information secure and confidential; the powers to disclose are consistent with powers in existing legislation such as the Disclosure Law. Also in Schedule 2 is an express power for the GFSC and the Economic Crime Division of the Customs and Immigration Service to inspect the Register for the purposes of carrying out their functions. Schedule 3 sets out amendments to the Foundations Law and Schedule 4 sets out amendments to other enactments, made for

the broad purpose of ensuring that the GFSC has suitable supervisory powers in respect of persons it regulates.

# PROJET DE LOI

ENTITLED

## **The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017**

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# PROJET DE LOI

ENTITLED

## **The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017**

**THE STATES**, in pursuance of their Resolution of the 16<sup>th</sup> day of February, 2017<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART 1 OFFICE OF THE REGISTRAR

#### **Office of Registrar of Beneficial Ownership of Legal Persons.**

1. (1) There is established the Office of the Registrar of Beneficial Ownership of Legal Persons ("**the Office of the Registrar**").

(2) The holder of that office shall be called the Registrar of Beneficial Ownership of Legal Persons ("**the Registrar**").

(3) The Registrar shall be appointed jointly by the Committee and the Committee for Economic Development (together, "**the Committees**").

(4) An appointment of the Registrar under this section -

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<sup>a</sup> Article IV of Billet d'État No. V of 2017.

- (a) may be periodic or for a fixed term,
- (b) is subject to such terms and conditions as the Committees may from time to time think fit, and
- (c) may be varied or terminated at any time by the Committees, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment, or by Resolution of the States.

(6) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> -

- (a) the Office of the Registrar is a public office, and
- (b) the Registrar is an office holder.

(7) The provisions of Schedule 1 have effect in respect of the Office of the Registrar.

**Register of Beneficial Owners of Legal Persons.**

2. (1) The Registrar shall establish and maintain a register of the

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<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478; amended by Ordinance No. XXXIII of 2003; and No. IX of 2016.

beneficial owners of relevant legal persons to be called the Register of Beneficial Owners of Legal Persons ("**the Register**") in accordance with Schedule 2, which schedule has effect.

(2) Information shall be provided to the Registrar and may be disclosed in accordance with Schedule 2.

**Functions of the Registrar.**

3. The functions of the Registrar are -
- (a) to establish and maintain the Register, and ensure its security and confidentiality, in accordance with Schedule 2,
  - (b) to ensure the accuracy of information relating to the beneficial ownership of relevant legal persons,
  - (c) to monitor and enforce the compliance of the resident agents of non-regulated relevant legal persons with their duties under this Law and the provisions of any other enactment relating to the beneficial ownership of relevant legal persons or the duties of resident agents in Guernsey,
  - (d) to obtain and retain information relating to nominee relationships in respect of relevant legal persons,
  - (e) to advise the Committees generally in relation to the administration and enforcement of this Law and the practice and procedures relating thereto,

- (f) to administer the Office of the Registrar,
- (g) to determine -
  - (i) the fees payable under regulations made under section 36,
  - (ii) the interest payable in the event of default in the due payment of fees, and
  - (iii) the classes or descriptions of person by whom such fees and interest are to be payable, and
- (h) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him -
  - (i) by or under this Law and any other enactment, or
  - (ii) by Resolution of the States.

**Ancillary powers of Registrar.**

4. (1) The Registrar, having regard to the provisions of section 3, has power to do anything that appears to him to be necessary or expedient for the purposes of or in connection with the exercise of his functions including, without limitation, power -

- (a) to require from the resident agent of a non-regulated relevant legal person direct access to (by electronic

means or otherwise) the record of beneficial owners of that relevant legal person,

- (b) to request and obtain information and documents in accordance with the provisions of paragraph 4 of Schedule 2,
- (c) to prepare and, subject to any provision to the contrary in this Law or any other enactment, to publish information, reports, forms, codes of practice, guidance, recommendations and other documents,
- (d) to appoint any person or body to advise him in relation to the exercise of any of his functions, and
- (e) to apply to the Court for directions under section 7.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 3 -

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
- (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

**Reports.**

5. (1) The Registrar shall, whenever directed by the Committee for Economic Development, and without prejudice to his powers to prepare and publish reports of his own motion, submit to the Committees a report on the exercise of his functions in such form and in respect of such matters and such periods as the Committee for Economic Development may (subject to any provision to the contrary in this Law or any other enactment) specify.

(2) The Committee for Economic Development -

(a) may submit the Registrar's report made under subsection (1) to the States, and

(b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

**Financial and accounting provisions.**

6. (1) All fees and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Committee for Economic Development for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with financial procedures agreed between the Committee for Economic Development and the Registrar, the Committee for Economic Development directs otherwise.

(3) The Registrar shall -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Committee for Economic Development, whenever that Committee may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Committee for Economic Development, submit to that Committee, in respect of such period as that Committee may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Committee for Economic Development.

**Power to apply for directions.**

7. (1) The Registrar may, if he believes that it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court, and on such an application the Court may make such order as it thinks fit.

(2) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an application under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>c</sup> ("Powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Power to amend section 3 by Ordinance.**

8. The States may by Ordinance amend section 3 where it appears to them to be necessary or expedient to do so for any of the purposes set out in section 39(1)(a).

PART 2  
INFORMATION DUTIES

**Duty of resident agent to obtain information in respect of beneficial owners.**

9. (1) The resident agent of a relevant legal person must take reasonable steps to ascertain the identity of the beneficial owners in relation to that relevant legal person.

(2) Subject to subsection (3), if the resident agent of a relevant legal person has reasonable grounds for believing that a person is or may be a beneficial owner in relation to that relevant legal person, the resident agent must serve a notice on the person requiring him –

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<sup>c</sup> Ordres en Conseil Vol. XVIII, p. 315; amended by Order in Council No. III of 2012; and Ordinance No. XXXIII of 2003.

- (a) to state whether he is a beneficial owner in relation to the relevant legal person, and
- (b) if so to confirm or correct any relevant particulars of his that are included in the notice, and to supply any that are missing.

(3) A resident agent is not under a duty to serve a notice under subsection (2) if –

- (a) the resident agent has already been informed that the person is a beneficial owner in relation to that relevant legal person, and
- (b) that information was provided either by the person himself or with his knowledge.

(4) A resident agent may also serve a notice on a person under this section if he knows or has reasonable cause to believe that the person knows the identity of any beneficial owner in relation to the relevant legal person, or knows the identity of someone likely to have that knowledge.

(5) A notice under subsection (4) must require the addressee –

- (a) to state whether or not the addressee knows the identity of –
  - (i) any beneficial owner in relation to the relevant legal person, or

(ii) any person likely to have that knowledge, and

(b) if so, to supply any particulars of theirs that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.

(6) A notice under this section must state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(7) In this section –

(a) a reference to knowing the identity of a person includes knowing information from which that person can be identified, and

(b) "**particulars**" means the required particulars under section 10(3).

**Record of beneficial owners.**

10. (1) The resident agent of a relevant legal person must keep a record of the required particulars of the beneficial owners of that relevant legal person in a record referred to in this Law as the "**record of beneficial owners**".

(2) The record of beneficial owners must be kept at the relevant legal person's registered office, or at some other place in Guernsey of which the Registrar has –

- (a) been notified, and
  - (b) approved in writing.
- (3) The "**required particulars**" of an individual means –
- (a) his name,
  - (c) his nationality,
  - (d) his date of birth,
  - (e) his principal residential address,
  - (f) if he became a beneficial owner in respect of the relevant legal person in question after this Part comes into force, the date on which he became a beneficial owner, and
  - (g) the grounds on which he is considered to be a beneficial owner.

(4) In respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, "required particulars" means information sufficient to identify and describe the class of individuals who are beneficial owners, with sufficient accuracy to make it possible to ascertain that an individual is or is not a member of that class.

(5) If a resident agent has ascertained that there are no beneficial owners in relation to a relevant legal person, he must record that fact in the record of beneficial owners.

**Duty of resident agent to keep record of beneficial owners up-to-date.**

11. (1) Subject to subsection (3), a resident agent must serve a notice on a person whose particulars are recorded in a relevant legal person's record of beneficial owners if the resident agent knows or has reasonable cause to believe that a relevant change has occurred.

(2) A "**relevant change**" in relation to a person occurs if –

- (a) the person ceases to be a beneficial owner in relation to a relevant legal person, or
- (b) any other change occurs, as result of which the required particulars stated for the person on the record of beneficial owners are incorrect or incomplete.

(3) A resident agent is not required to serve a notice under subsection (1) if –

- (a) the resident agent has already been informed of the relevant change and of the information referred to in subsection (5)(b), and
- (b) that information was provided either by the person concerned or with his knowledge.

(4) The resident agent must serve a notice under subsection (1) as soon as reasonably practicable after he learns of the change or first has reasonable cause to believe that the change has occurred.

(5) The notice must require the addressee, within the period of one month beginning with the date of the notice –

(a) to confirm whether or not the change has occurred, and

(b) if so –

(i) to state the date of the change, and

(ii) to confirm or correct the required particulars included in the notice, and supply any that are missing from the notice.

(6) On receipt of information received pursuant to the service of a notice under this section, or on otherwise being satisfied that a relevant change has occurred, a resident agent must within seven days amend the record of beneficial owners accordingly.

**Duty of resident agent to notify Registrar of changes.**

12. (1) This section applies to a resident agent when there has been a change in the particulars contained in the record of beneficial owners.

(2) Within 14 days of this section applying to him, the resident agent must give notice to the Registrar of the change and of the date on which it occurred, to the best of his knowledge.

(3) When providing information to the Registrar under this section, the resident agent must serve copies of the information provided on –

- (a) the relevant legal person, and
- (b) upon request, the officers of the relevant legal person.

**Duty of resident agent to ensure security of information.**

13. A resident agent must take all reasonable steps to ensure the security and confidentiality of information disclosed to him under this Law or under the relevant legal person Laws, and must not disclose such information other than in compliance with a duty imposed, or in exercise of a power conferred, under this Law or those Laws.

**Duty to retain documents following dissolution, etc.**

14. (1) This section applies where a relevant legal person is dissolved, terminated or struck off.

- (2) Where this section applies –
  - (a) if one has been appointed, the liquidator, or otherwise,
  - (b) the resident agent immediately before the dissolution, termination or striking off,

must retain the record of beneficial ownership relating to the relevant legal person as at the date of dissolution, termination or striking off for the minimum retention

period, and must comply with any requirement of the Registrar under this Law in that period.

(3) The Committee may make provision by regulations in respect of the retention of the record of beneficial ownership relating to a relevant legal person in circumstances where -

- (a) this section applies, and
- (b) the resident agent immediately before the dissolution, termination or striking off is a legal person that has subsequently been dissolved, terminated or struck off.

**Duty of beneficial owners to supply information.**

15. (1) This section applies to a person if -

- (a) he is a beneficial owner in relation to a relevant legal person,
- (b) his required particulars are not stated in the relevant legal person's record of beneficial owners,
- (c) he knows, or ought reasonably to know, (a) and (b) to be the case, and
- (d) he has not been served with a notice by the resident agent of that relevant legal person under section 9.

(2) Within 21 days of this section applying to him the person

must–

- (a) notify the resident agent of his status as a beneficial owner in relation to the relevant legal person,
- (b) state the date on which, to the best of his knowledge, he acquired that status, and
- (c) serve on the resident agent his required particulars.

**Duty of beneficial owners to update information.**

16. (1) This section applies to a person if –

- (a) the required particulars of the person are stated in a relevant legal person's record of beneficial owners,
- (b) a relevant change in relation to the required particulars of the person has occurred,
- (c) the person knows, or ought reasonably to know, (a) and (b) to be the case, and
- (d) the person has not been served with a notice by the resident agent of the relevant legal person under section 11.

(2) Within 21 days of this section applying to him the person

must–

- (a) notify the resident agent of the change,
- (b) state the date on which, to the best of his knowledge, it occurred, and
- (c) serve on the resident agent any information needed to update the required particulars.

**Failure to comply with information duties.**

17. (1) A person who without reasonable excuse fails to comply with-

- (a) a notice served on him under section 9 or 11,
- (b) a duty under section 15 or 16, or
- (c) a requirement imposed on him under paragraph 4 of Schedule 2,

is, unless the person is a regulated person, liable to a civil penalty.

(2) A resident agent who fails to comply with –

- (a) a requirement imposed on him under section 4(1)(a), or
- (b) a duty imposed on him under sections 9 to 13,

and a resident agent or a liquidator who fails to comply with a duty under section 14 is guilty of an offence, and, unless the person is a regulated person, liable to a civil penalty.

(3) It is a defence for a resident agent charged with failing to comply with a duty imposed on him under sections 9 to 13 to prove that he took all reasonable steps to attempt to comply with the duty.

**False or misleading information.**

18. (1) If a person to whom subsection (2) applies –
- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
  - (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
  - (c) 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
  - (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

- (2) This subsection applies to a person who –
- (a) makes any statement or provides any information or document to the Registrar, or to any officer, servant or agent of the Registrar, when acting in the exercise of his functions, or
  - (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Registrar in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by the Registrar for the purpose of exercising his functions.

PART 3  
AMENDMENTS TO OTHER ENACTMENTS

**Amendments to Companies Law.**

19. (1) The Companies (Guernsey) Law, 2008<sup>d</sup> ("the Companies Law") is amended as follows.

(2) At the end of section 17(2)(d), insert "and a statement that he has complied with his obligations under section 486,".

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<sup>d</sup> Order in Council No. VIII of 2008; amended by Order in Council No. XXV of 2008; No. XIII of 2010; No. I of 2013; No. VI of 2014; Ordinance Nos. XXV and LIV of 2008; Nos. VII and XIV of 2009; No. XI of 2010; No. XXXI of 2012; No. XXXI of 2013; Nos. IV, XII and XXVI of 2015; No. IX of 2016; G.S.I. No. 34 of 2009; G.S.I. No. 37 of 2013; G.S.I. No. 84 of 2014; and G.S.I. Nos. 29, 35 and 38 of 2016.

(3) After section 237, insert –

**"Power of Committee to make regulations.**

237A. (1) The Committee may, after consultation with the Registrar, make regulations amending sections 234 and 235.

(2) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact regulations (and vice versa). "

(4) For section 486, substitute –

**"Duties of resident agent on incorporation.**

486. (1) Before an application is made for the incorporation of a company the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that company, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the company (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken

reasonable steps to verify that information, and

- (c) serve copies of the statements on –
  - (i) the company,
  - (ii) upon request, the proposed first directors of the company.

(2) In this section, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law."

(5) Sections 487 and 488 are repealed.

(6) In the section heading of section 489 delete "or cancellation", and for subsections (1) and (2) of section 489, substitute –

"(1) This section applies when, in the opinion of the resident agent of a company, a member of the company or a beneficial owner in relation to the company (a "beneficial owner") has -

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,
- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances

where those sections apply), or

- (c) made a statement under those sections which is false, deceptive or misleading in a material particular.

(2) This section also applies when, in the opinion of the Registrar of Beneficial Ownership a member or beneficial owner has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(2A) When this section applies by virtue of subsection (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subsection (1), and when this section applies by virtue of subsection (2), the Registrar of Beneficial Ownership may notify the Registrar of the opinion referred to in subsection (2).

(2B) On the Registrar receiving a notification under subsection (2A), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may, if he thinks it proportionate and appropriate in all the circumstances place such restrictions

as he thinks fit on rights attaching to the relevant member's interest in the company, including, without limitation -

- (a) any right to transfer the interest,
- (b) any voting rights,
- (c) any right to further shares in respect of shares already held, and
- (d) any right to payment due to the member's interest, whether in respect of capital or otherwise.

(2C) For the avoidance of doubt, when the Registrar places restrictions on a member's interests under subsection (2B), he must notify the member and the company.

(2D) A resident agent who fails to comply with the duty under subsection (2A), and a company which fails to comply with or give effect to restrictions placed on rights attaching to a member's interest under subsection (2B), is guilty of an offence."

(7) In section 489(3), for "(2)(a)" substitute "(2B)", in section 489(4) delete "or cancellation" and for "(2)" substitute "(2B)", and in section 489(5) for "the company has" substitute "the company and the Registrar have" .

(8) After section 489, insert –

**"Resignation of resident agent.**

489A. (1) A registered agent of a company may give notice stating that he intends to resign from his position as registered agent.

(2) A notice under subsection (1) shall be served on –

(a) the Registrar,

(b) the Registrar of Beneficial Ownership,

(c) each director at –

(i) his service address, and

(ii) his usual residential address where that address is different from his service address, and

(d) the company.

(3) The notice must state –

(a) the company's name and registration number,

(b) the date from which the resignation of the resident agent shall be effective,

(c) that the company may be struck off the Register of Companies in accordance with Part XX if it

does not appoint a new resident agent.

(4) A company which does not appoint a new replacement agent on the resignation of the resident agent becoming effective following a notice under this section is liable to be struck off the Register of Companies in accordance with Part XX."

(9) At the end of section 490, insert –

"(7) For the avoidance of doubt, this section is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law."

(10) In section 513(1)(c), after "431(1)," insert "489(2D),".

(11) In section 532 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,"

""**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**Registrar of Beneficial Ownership**" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,"

**Amendments to LLP Law.**

20. (1) The Limited Liability Partnerships (Guernsey) Law, 2013<sup>e</sup> ("**the LLP Law**") is amended as follows.

(2) For section 8(3)(b), substitute –

"(b) a statement of the resident agent (if any), comprising his name and address, and confirmation that he has complied with his obligations under paragraph 3 of Schedule 2,".

(3) In section 24, for the existing section heading substitute "Content and timing of annual validation", after subsection (1), insert -

"(1A) The Registrar may prescribe different dates from those specified in section 22 for the completion of the annual validation and for the currency of the information contained therein,".

and in subsection (2) after "subsection (1)" insert "and subsection (1A)".

(4) In section 92(1), for "or 93" substitute "93, or Schedule 2".

(5) In section 114 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,".

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<sup>e</sup> Order in Council No. VI of 2014; amended by Ordinance No. XII of 2015; and No. IX of 2016.

""**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**Registrar of Beneficial Ownership**" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,".

(6) For paragraph 3 of Schedule 2, substitute –

**"Duties of resident agent on incorporation.**

3. (1) Before an application is made for the incorporation of an LLP the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that LLP, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the LLP (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken reasonable steps to verify that information, and
- (c) serve copies of the statements on –
  - (i) the LLP, and

(ii) upon request, the proposed first members of the LLP.

(2) In this paragraph, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law."

(7) Delete paragraphs 4 and 5 of Schedule 2.

(8) In the paragraph heading of paragraph 6 of Schedule 2 delete "or cancellation", and for subparagraphs (1) and (2) of paragraph 6 of Schedule 2, substitute –

"(1) This paragraph applies when, in the opinion of the resident agent of an LLP, a member of the LLP or a beneficial owner in relation to the LLP (a "beneficial owner") has -

(a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,

(b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances where those sections apply), or

(c) made a statement under those sections which is false, deceptive or misleading in a material

particular.

(2) This paragraph also applies when, in the opinion of the Registrar of Beneficial Ownership, a member or beneficial owner has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(2A) When this paragraph applies by virtue of subparagraph (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subsection (1), and when this section applies by virtue of subparagraph (2), the Registrar of Beneficial Ownership may notify the Registrar of the opinion referred to in subsection (2).

(2B) On the Registrar receiving a notification under subsection (2A), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may, if he thinks it proportionate and appropriate in all the circumstances place such restrictions as he thinks fit on rights attaching to the relevant member's interest in the LLP.

(2C) For the avoidance of doubt, when the Registrar places restrictions on a member's interests under subsection (2B), he must notify the member and the LLP.

(2D) A resident agent who fails to comply with the duty under subsection (2A), and an LLP which fails to comply with or give effect to restrictions placed on rights attaching to a member's interest under subsection (2B), is guilty of an offence."

(9) In paragraph 6(3) of Schedule 2, for "(2)(a)" substitute "(2B)", in paragraph 6(4) delete "or cancellation" and for "(2)" substitute "(2B)" and in paragraph 6(5) for "the LLP has" substitute "the LLP and the Registrar have".

(10) At the end of paragraph 6 of Schedule 2, insert –

"(7) For the avoidance of doubt, this section is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law."

(11) After paragraph 6 of Schedule 2, insert –

**"Resignation of resident agent.**

**6A.** (1) A registered agent of an LLP may give notice stating that he intends to resign from his position as registered agent.

(2) A notice under subsection (1) shall be served on –

(a) the Registrar,

- (b) the Registrar of Beneficial Ownership,
- (c) each member at –
  - (i) his service address, and
  - (ii) his usual residential address where that address is different from his service address, and
- (d) the LLP.

(3) The notice must state –

- (a) the LLP's name and registration number,
- (b) the date from which the resignation of the resident agent shall be effective,
- (c) that the company may be struck off the Register in accordance with Part VI if it does not appoint a new resident agent.

(4) An LLP which does not appoint a new replacement agent on the resignation of the resident agent becoming effective following a notice under this section is liable to be struck off the Register in accordance with Part VI."

**Amendments to Foundations Law.**

21. (1) The Foundations (Guernsey) Law, 2012<sup>f</sup> ("**the Foundations Law**") is amended as follows.

(2) In section 3(2), for "(see section 12)" substitute "(see Schedule 1A)".

(3) For section 12, substitute –

**"Resident agents.**

12. Schedule 1A (which makes provision in relation to resident agents) has effect."

(4) In section 48(1), after "section 47(1)" insert "or Schedule 1A".

(5) In section 52 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,"

"**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,"

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<sup>f</sup> Order in Council No. I of 2013; amended by No. IX of 2016.

""**police officer**" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,"

""**Registrar of Beneficial Ownership**" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,".

(6) In paragraph 7(3) of Schedule 1, for paragraph (f) substitute –

"(f) a statement by the resident agent (if any), comprising his name and address and confirmation that he has complied with his obligations under paragraph 3 of Schedule 1A,".

(7) In paragraph 22 of Schedule 1, for "under section 12" substitute "under Schedule 1A".

(8) Immediately after Schedule 1 insert the schedule at Schedule 3 as Schedule 1A.

(9) In paragraph 24(1)(i) of Schedule 2, for "section 12" substitute "Schedule 1A".

**Amendment to other enactments.**

**22.** Schedule 4 (Amendments to other enactments) has effect.

PART 4  
ENFORCEMENT

**Criminal penalties for offences under this Law.**

23. (1) A person (including a relevant legal person) guilty of an offence under this Law is liable -

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both, and
- (ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years or both.

(2) The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability (civil or criminal) in respect thereof (except as provided for by section 30).

(3) In deciding whether a person is guilty of an offence under this Law the court must consider whether he followed any relevant rules, codes, guidance principles or instructions which were at the time concerned -

- (a) made or issued by the Registrar under this Law or any other enactment, and
- (b) published in a manner he approved as appropriate in his opinion to bring the rules, guidance or instructions to the attention of persons likely to be affected by them.

**Criminal liability of officers, etc.**

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

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in such a capacity,

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

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

(3) 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 -

- (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 such a capacity,

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

(4) 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 the body and not in the name of any of its members.

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

**Civil penalties.**

25. (1) Where the Registrar is satisfied that a person is liable to a civil penalty under section 17, he may (subject to the provisions of this section and section 29) impose on that person a financial penalty in respect of the failure to comply that gave rise to the liability of such amount as he considers appropriate and proportionate, but not exceeding £20,000, or such other amount as the Committee may prescribe by regulations.

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

- (a) whether the failure was brought to the attention of the Registrar by the person concerned,
- (b) the seriousness of the failure,

- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty,
- (f) the penalties imposed by the Registrar under this section in other cases, and
- (g) any other matter the Registrar considers relevant.

(3) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

(4) Where the Registrar proposes to impose a financial penalty, he must notify in writing the person on whom the penalty is to be imposed of –

- (a) the proposed penalty, and the reasons for the same,
- (b) the date on which it is proposed, subject to section 29, to impose the penalty, which must not be less than 42 days after the date of the notice, and
- (c) that person's right to make written representations to the Registrar under section 29(1).

- (5) Where the Registrar imposes a financial penalty he must-
- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
  - (b) include in the notice a statement of the right to apply to the Court under section 32.

(6) Where a penalty is imposed on a person under this section, the Registrar may publish, in such manner and for such period as the Registrar may determine, his name and the amount of the penalty, and the publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

**Disqualification orders of Registrar against resident agents of non-regulated relevant legal persons, and notification requirements.**

26. (1) Without prejudice to any other powers of the Registrar, where in the opinion of the Registrar the resident agent of a non-regulated relevant legal person has contravened in a material particular -

- (i) a provision of this Law or the relevant legal person Laws, or
- (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

the Registrar may (subject to subsection (2)) make and subsequently renew, on one

or more occasions, an order (a "**resident agent disqualification order**") disqualifying him from being a resident agent of a non-regulated relevant legal person.

(2) A person who performs or agrees to perform any function in breach of a resident agent disqualification order is guilty of an offence.

(3) A relevant legal person and its officers shall take all reasonable care to ensure that none of its functions in relation to the carrying on of any business of the relevant legal person is performed by a person who is disqualified from performing that function by a resident agent disqualification order.

(4) A resident agent disqualification order and any renewal thereof -

(a) shall have effect for such period (which may be indefinite), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(5) Where the Registrar proposes to make a resident agent disqualification order, issue a private reprimand under section 27 or to publish a statement under section 28, he must notify in writing the person in respect of whom the order is to be imposed, reprimand issued or statement published of –

(a) the proposed order, reprimand or statement, and the reasons for the same,

- (b) the date on which it is proposed, subject to section 29, to make the order, issue the reprimand or publish the statement, which must not be less than 42 days after the date of the notice, and
- (c) that person's right to make written representations to the Registrar under section 29(1).

(6) Where the Registrar makes a residents agent disqualification order, issues a private reprimand or publishes a statement under section 28 he must—

- (a) issue to the person in respect of whom the order is being made notice of the order, statement or reprimand, and
- (b) include in the notice a statement of the right to apply to the Court under section 32.

**Private reprimands.**

27. (1) Without prejudice to any other powers of the Registrar, where the Registrar considers that, having regard to the conduct of a resident agent of a non-regulated relevant legal person, it is appropriate to do so, the Registrar may issue to the resident agent a private reprimand.

(2) The Registrar may not publish a private reprimand without the consent of the resident agent in question.

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

**Public statements.**

28. (1) Without prejudice to any other powers of the Registrar, where in the opinion of the Registrar a resident agent of a non-regulated relevant legal person has contravened in a material particular -

- (i) a provision of this Law or the relevant legal person Laws, or
- (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

it may publish, in such manner and for such period as the Registrar may determine, a statement to that effect.

The statement may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

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

- (a) whether the contravention was brought to the attention

of the Registrar by the person concerned,

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

(3) If at any time it appears to the Registrar that a statement published under this section or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Registrar shall make such addition, erasure or other alteration to the statement or content thereof as the Registrar considers necessary.

(4) A statement published under subsection (1) may be taken into account by the Registrar in considering any matter under this Law concerning the resident agent in question.

**Representations prior to civil penalty, etc.**

29. (1) The person on whom a notice is served under section 25(4) or section 26(5) may make written representations to the Registrar concerning the proposed financial penalty, order, statement or reprimand within 28 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Registrar -

(a) must consider their representations, and

(b) may decide to –

(i) impose the penalty, make the order, publish the statement or issue the reprimand,

(ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, or issue a private reprimand or publish a statement under section 28,

(iii) withdraw the penalty, not make the order, not issue the reprimand or not publish the statement, or

(iv) postpone the date for imposing the penalty, making the order, publishing the statement or issuing the reprimand,

as the case may be, but in any event must inform that person of his decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the order is made or would otherwise have been made, the statement is published or would otherwise have been published, or the reprimand is issued or would otherwise have been issued, as the case may be.

(3) For the avoidance of doubt, where the Registrar has imposed a financial penalty under section 25 he may not seek to recover payment of that penalty until –

- (a) 28 days immediately following the date of the notice of the penalty issued under section 25(5)(a), or
- (b) if an application to the Court is instituted within that period under section 32, the final determination, or withdrawal, of that application,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

**Relationship of civil penalties with prosecutions.**

30. (1) A relevant legal person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the relevant legal person.

PART 5  
MISCELLANEOUS AND FINAL

**Meaning of "beneficial owner".**

31. The Committee may prescribe the meaning of the expression "beneficial owner", and any related expressions, for the purposes of this Law, by way of regulations.

**General right to apply to Court to set aside action of Registrar.**

32. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Registrar (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subsection (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court -

(a) the applicant shall give at least seven days' notice of the application to the Registrar,

(b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Registrar.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Service of documents.**

33. (1) Any notice or document other than a summons to be served under or for the purposes of the provisions of this Law may be served on -

(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, or by being transmitted to his relevant electronic address,

(b) a legal person with a registered office in Guernsey, by

being left at, or sent by post or transmitted to, that office, or by being transmitted to its relevant electronic address,

- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (d) an unincorporated body -
  - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
  - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (e) the Registrar, by being left at, or sent by post or transmitted to, the Registrar's offices.

(2) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being published -

(a) by the Registrar in such manner and for such period as he thinks fit, or

(b) in La Gazette Officielle (or, where service is required to be effected in Alderney, in the Alderney Official Gazette) on two occasions falling in successive weeks.

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

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions 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.

(5) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Registrar under or for the purposes of the provisions of this Law shall be deemed to have been served until it is received.

(7) In this section -

**"by post"** means by registered post, recorded delivery service or ordinary letter post,

**"non-business day"** means -

(a) a Saturday, a Sunday, Christmas Day and Good Friday, and

(b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>g</sup>,

**"electronic address"** includes, without limitation, an e-mail address and a telecommunications address,

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<sup>g</sup> Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; No. XI of 1993; Vol. XXXIV, p. 504; No. XIV of 1994; and Vol. XXXV(1) p. 367.

**"relevant electronic address"** means an electronic address –

- (i) with which the person or body concerned has a personal, business or other connection, and
- (ii) a document transmitted to which is likely to come to his attention,

**"served"** includes given and submitted,

**"summons"** includes any document compelling a person's attendance before a court, and

**"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served immediately after it was transmitted, unless the contrary is shown.

**Exclusion of liability, etc.**

34. (1) No liability is incurred by –
- (a) the Registrar,
  - (b) any person to whom the Registrar has, under paragraph 3 of Schedule 1, delegated any function,
  - (c) any person appointed as Deputy Registrar under

paragraph 4 of Schedule 1, or

(d) any officer or servant of the Registrar or of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>h</sup>.

(3) A requirement imposed by or under this Law to provide any information or document has effect notwithstanding any obligation as to confidentiality or other restriction on 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.

(4) Nothing in this Law authorises -

(a) a disclosure in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>i</sup> of personal data which are not exempt from those

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<sup>h</sup> Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; and G.S.I. No. 27 of 2006.

<sup>i</sup> Order in Council No. V of 2002; amended by Ordinance No. XXXIII of 2003; No. II of 2010; No. XXXIV of 2011; No. XLIX of 2012; No. XXIX of 2013; and No. IX of 2016.

provisions, or

- (b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>j</sup>.

(5) Nothing in this Law compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>k</sup>), but an Advocate or other legal adviser may be required to give the name and address of any client.

**Guidance.**

35. (1) The Registrar, after consultation with the Committees and such other persons as appear to him to be appropriate, may issue such guidance as he thinks necessary for the purposes of this Law and other enactments making provision in respect of beneficial ownership and resident agents.

(2) The Registrar may, after consultation mentioned in subsection (1), revise the whole or any part of guidance issued under this Law and issue that revised guidance.

**Fees payable to the Registrar.**

36. (1) The Committee for Economic Development may make

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<sup>j</sup> Order in Council No. XXX of 2003; amended by Ordinance No. XXXIII of 2003; No. XXIX of 2013; No. IX of 2016; and G.S.I. No. 26 of 2004.

<sup>k</sup> Order in Council No. XXIII of 2003; amended by Order in Council No. XVI of 2009, No. XV of 2011; Ordinance No. XXXIII of 2003; No, XXUX if 2011; and No. XXXIX of 2015.

regulations which prescribe -

- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of the Registrar's functions,
- (b) the interest payable in the event of default in the due payment of fees, and
- (c) the persons by whom such fees and interest are to be payable.

(2) The Registrar may refuse to exercise his functions in any particular case if the fees payable have not been paid.

**Nominee relationships.**

37. (1) The Committee may by regulation make provision in relation to the obtaining by resident agents of information relating to nominee relationships in respect of relevant legal persons, and the disclosure of such information by resident agents to the Registrar.

(2) Subject to subsection (3), regulations made under subsection (1) may contain provision as to the creation of new liabilities, obligations, penalties and offences.

(3) The power conferred by subsection (2) to create new liabilities, obligations, penalties and offences does not include power -

- (a) to provide for offences to be triable only on indictment,

- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment exceeding six months or a fine exceeding level 5 on the uniform scale, or both, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding six months.

**Regulations made by the Registrar.**

38. (1) Without prejudice to any other power conferred on him to make regulations or his functions under section 3, the Registrar may make such regulations as he thinks fit in relation to the practice and procedure of the Office of the Registrar and in relation to the exercise of his functions.

(2) The Registrar must consult with and obtain the approval of the Committees before making the regulations.

**General provisions as to subordinate legislation.**

39. (1) The States may by Ordinance -

- (a) amend Schedule 2, where it appears to the States to be necessary or expedient to do so for the purpose of-
  - (i) enabling the Registrar more effectively to carry out any of his functions under this Law,

- (ii) enhancing or protecting the security and confidentiality of the Register,
- (iii) facilitating the administration and maintenance of the Register,
- (iv) enhancing or protecting the reputation or economic interests of the Bailiwick or any part thereof,
- (v) improving or enhancing the investigation, prevention or detection of crime,
- (vi) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
- (vii) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
- (viii) discharging any international obligation to which the Bailiwick is subject, or
- (ix) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions under this Law of the Registrar, and

(b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) Without prejudice to the generality of the powers conferred by any other provision of this Law, the States may by Ordinance made under this section repeal, replace amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, any of the regulatory Laws and any of the relevant legal person Laws for the purposes of enabling the Registrar more effectively to carry out any of his functions under this Law and carrying this Law into effect.

(3) The provisions of subsections (1) and (2) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(4) The Committee may by regulations make further provision in respect of the power of the Registrar under section 4(1)(a), including, but not limited to, prescribing any requirements governing its exercise.

(5) Any regulations made under the provisions of subsection (4) shall not have effect unless and until approved by a resolution of the States.

(6) Any Ordinance or regulation under this Law -

(a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder,

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may, in the case of an Ordinance, and without limitation, contain provision -
  - (i) subject to subsection (7), as to the creation of new liabilities, obligations, penalties and offences,
  - (ii) making consequential amendments to this Law and any other enactment, and
  - (iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(7) The power conferred by subsection (6)(c)(i) to create new liabilities, obligations, penalties and offences does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being

imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>1</sup>, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(8) Any power conferred by this Law to make any Ordinance or regulation 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,

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<sup>1</sup> Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; and No. IX of 2016.

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

(9) Except for regulations made under subsection (4) and paragraph 2(3) of Schedule 2, regulations under this Law must be laid before a meeting of the States as soon as possible after being made; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

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

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff, the Juge-Délégué and a Judge of the Royal Court,

"**beneficial owner**": see section 31,

"**civil penalty**": see section 25,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>m</sup>,

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<sup>m</sup> Ordres en Conseil Vol. XXX, p. 243; amended by Orders in Council No. XXXI, p. 278; No. XX of 1991; No. XIII of 1994; No. II of 1997; Nos. XVII and XXI of 2002; Nos. III and XXII of 2003; Nos. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; Ordinance No. XXXIII of 2003; No. XXXIV of 2005; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXII of 2016; and G.S.I. No. 29 of 2009.

**"the Committee"** means the States Policy and Resources Committee,

**"the Committees"**: see section 1(3),

**"the Committee for Economic Development"** means the States Committee for Economic Development,

**"the Companies Law"**: see section 19(1),

**"conduct"** includes acts, omissions and statements,

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

**"criminal conduct"** means any conduct which -

- (a) constitutes a criminal offence under the law of any part of the Bailiwick, or
- (b) is, or corresponds to, conduct which, if it took place in any part of the Bailiwick, would constitute an offence under the law of that part of the Bailiwick,

**"criminal investigation"** means an investigation of any criminal conduct including an investigation of alleged or suspected criminal conduct or an investigation of whether criminal conduct has taken place,

**"criminal proceedings"** does not include legal proceedings outside Guernsey unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent,

consists of criminal conduct,

**"documents"** means information recorded in any form (including without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of the information in hard copy; and a document is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read,

**"Economic Crime Division"** means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime (including for the avoidance of doubt the Financial Intelligence Service),

**"enactment"** includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

**"Financial Intelligence Service"** means the division of the Economic Crime Division comprising persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part I of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>n</sup>, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

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<sup>n</sup> Order in Council No. XVI of 2007; amended by Ordinance No. XXXIX of 2008; No. VII of 2009; No. XIV of 2010; No. XIX of 2010; No. XXXVII of 2010; No. XVI of 2014; No. LIII of 2014; No. XXXIX of 2015; and No. IX of 2016.

**"the Foundations Law"**: see section 21(1),

**"Guernsey"** includes Herm and Jethou,

**"information"** includes documents,

**"intelligence service"** has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,

an **"LLP"** means a limited liability partnership incorporated under the LLP Law,

**"the LLP Law"**: see section 20(1),

**"the minimum retention period"** means –

- (a) a period of at least 5 years starting from the date of the dissolution or termination of the relevant legal person in question, or
- (b) such longer period as the Registrar may direct,

a **"nominee relationship"** is a relationship in which an interest in a legal person, or a power exercisable in relation to a legal person, is held or is exercisable by one person on behalf of another,

**"non-regulated relevant legal person"**: see section 41,

**"the Office of the Registrar"**: see section 1(1),

**"person"** includes -

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person, and
- (d) an unincorporated body of persons,

**"record of beneficial owners"**: see section 10(1),

**"the Register"**: see section 2(1),

**"the Registrar"**: see section 1(2),

**"regulated person"**: see section 41,

**"regulated relevant legal person"**: see section 41,

**"the regulatory Laws"** means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>o</sup>,

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<sup>o</sup> Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; No. XVIII of 2008; Nos. XIII and XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, pp. 51 and 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXIX of 2016; and G.S.I. No. 83 of 2010.

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>p</sup>,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>q</sup>,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>r</sup>,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>s</sup>, and
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Committee,

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<sup>p</sup> Ordres en Conseil Vol. XXXV(1), p. 271; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; and G.S.I. No. 1 of 2008; G.S.I. No's. 35 and 83 of 2010.

<sup>q</sup> Order in Council No. I of 2001; amended by No. I of 2000; No. XIV of 2003; No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013.

<sup>r</sup> Order in Council No. XXI of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XII of 2008; No. LI of 2008; No. VIII of 2010; No. XXXI of 2010; No. XXXVI of 2011; No. LV of 2014; No. XII of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. Nos. 15 and 83 of 2010; G.S.I. No. 68 of 2014; G.S.I. No. 121 of 2015.

<sup>s</sup> Order in Council No. XXII of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XIII of 2008; No. IX and XXXII of 2010; Nos. XII and XXXIX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 2 of 2008; G.S.I. Nos. 16 and 83 of 2010.

"**relevant change**": see section 11(2),

"**relevant legal person**": see section 41,

"**the relevant legal person Laws**" means the Companies Law, the LLP Law and the Foundations Law,

"**required particulars**": see section 10(3),

"**the States**" means the States of Guernsey, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) 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.

**Meaning of "relevant legal person" and associated terms.**

41. (1) In this Law, a "**relevant legal person**" means –
- (a) a company incorporated under the Companies Law,
  - (b) an LLP incorporated under the LLP Law, or
  - (c) a foundation established under the Foundations Law.

- (2) In this Law a "**regulated person**" means a person who –
- (a) holds or is deemed to hold a licence granted by the Commission under the regulatory Laws,
  - (b) carries on a prescribed business for the purposes of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008<sup>t</sup>, or
  - (c) carries on a registered financial services business for the purposes of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>u</sup>.

(3) In this Law a "**regulated relevant legal person**" means a relevant legal person which is administered, controlled or operated by a regulated person in the course of his activities, and a "**non-regulated relevant legal person**" means a relevant legal person which is not a regulated relevant legal person.

- (4) In this Law, the "**officers**" of a relevant legal person means –
- (a) in the case of a company, the officers of the company (within the meaning of section 532 of the Companies

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<sup>t</sup> Order in Council No. XII of 2009; amended by Ordinance No. XXXIX of 2015; No. II of 2016; and No. IX of 2016.

<sup>u</sup> Order in Council No. XV of 2008; amended by Order in Council No. XIII of 2010; No. XXXII of 2008; Ordinance Nos. XII and XX of 2015; Nos. II and IX of 2016; G.S.I. No. 75 of 2008; G.S.I. Nos. 17 and 83 of 2010; and No. 16 of 2013;

Law),

(b) in the case of an LLP, those members of the LLP exercising functions under the members' agreement equivalent to the functions of the officers of a company (within the meaning of section 532 of the Companies Law), and

(c) in the case of a foundation, the foundation officials of the foundation.

(5) In this Law, the "**members**" of a relevant legal person means–

(a) in the case of a company, the members of the company,

(b) in the case of an LLP, the members of the LLP, and

(c) in the case of a foundation, the beneficiaries (if any) of the foundation.

(6) The States may by Ordinance amend the definitions at subsections (1), (2), (4) and (5).

**Citation.**

42. This Law may be cited as the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

**Commencement.**

43. This Law shall come into force on the day appointed by regulations

made by the Committee, and regulations made under this section may appoint different dates for different provisions of this Law and for different purposes.

SCHEDULE 1  
OFFICE OF THE REGISTRAR

**Salary or fees of Registrar.**

1. The Registrar shall be paid such salary, fees, emoluments and other allowances as the Committee may determine.

**Appointment of staff.**

2. (1) The Registrar may -
- (a) subject to the approval of the Committee, appoint such officers and employees, and
  - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Committee, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and employees.

**Delegation of functions.**

3. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph, and of paragraph 4, are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

**Appointment of Deputy Registrar.**

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Committee may, subject to such terms and conditions as it may from time to time think fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period in which the Registrar is unavailable or unable to act or during any vacancy in that office.

(2) A function exercised by a Deputy Registrar pursuant to an

appointment under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar -
  - (a) may be varied or terminated at any time by the Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
  - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

**Disclosure of interests.**

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seised under this Law or any other enactment, disclose the nature of his interest to the Committee.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

**Proof of documents.**

6. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or

(b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.

(2) The document -

(a) may be received in evidence,

(b) unless the contrary is proved, is deemed -

(i) to be the document which it purports to be, and

(ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and

(c) is evidence of the matters stated therein.

## SCHEDULE 2

### REGISTER OF BENEFICIAL OWNERS OF LEGAL PERSONS

Section 2(1).

#### **Register of Beneficial Owners of Legal Persons and security of information.**

1. (1) The Registrar shall establish the Register which shall be kept in such form as the Registrar thinks fit and may, without limitation, be kept in electronic form.

(2) The Registrar shall take all reasonable steps to ensure the confidentiality and security of the Register and of information kept on the Register, and of other information disclosed to him under this Law or under any other enactment, and (subject to subparagraph (3) and paragraphs 2 and 3) shall not disclose to any other person the Register or any part of it, or information or document obtained by him or disclosed to him –

(a) under this Law or any other enactment, or

(b) in connection with the carrying out of any of his functions.

(3) The Registrar shall, on application being made to him in such form as he may specify, and having taken all reasonable steps to verify the identity of the applicant, disclose to a person any information on the Register directly relating to that person only.

#### **Disclosure of information by the Registrar.**

2. (1) Subject to the provisions of the regulatory Laws, information obtained by the Registrar -

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

may only be disclosed if the disclosure is for any purposes set out in subsection (2).

(2) The purposes are any of the following –

- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Guernsey or elsewhere,
- (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of Guernsey or of any country or territory outside Guernsey,
- (c) the carrying out of any functions of any intelligence service,
- (d) the carrying out -
  - (i) by the Commission, or
  - (ii) by a body in another country or territory which carries out similar functions to the Commission,

of its functions,

- (e) the carrying out -
  - (i) by the Director of Income Tax, or
  - (ii) by an officer of a body in another country or territory which carries out similar functions to the Director of Income Tax,

of his functions,

- (f) the conduct of -
  - (i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007<sup>v</sup>, or
  - (ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law,

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<sup>v</sup> Order in Council No. XVII of 2008; amended by Order in Council No. XIII of 2010; No. XVI of 2012; Ordinance No. XXX of 2008; No. VII of 2009; No. XX of 2015; and No. IX of 2016

- (g) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
- (h) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
- (i) the enabling of any person or body within the Bailiwick, whose functions include any of the matters set out at paragraphs (g) and (h), to carry out those functions,
- (j) the enabling of any person or body in another country or territory, with similar functions to those set out at paragraphs (g) and (h), to carry out those functions,
- (k) the carrying out by the Alderney Gambling Control Commission of its functions,
- (l) the carrying out by the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Guernsey) Law, 2008<sup>w</sup> of his functions,
- (m) the carrying out by the Registrar of Non-Profit

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<sup>w</sup> Order in Council No. XXVI of 2008; amended by Order in Council No. III of 2010; No. VIII of 2011; Ordinance No. XXXVI of 2008; No. XLIX of 2008; No. XXIX of 2010; No. VI of 2015; and No. IX of 2016.

Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010<sup>x</sup> of his functions,

(n) the enabling of the Registrar of Companies, the Registrar of Limited Liability Partnerships, the Registrar of Foundations, the Greffier, and the Registrar for the purposes of the Companies (Alderney) Law, 1994<sup>y</sup> –

(i) to carry out their functions relating to the beneficial ownership of legal persons, or

(ii) to investigate matters relating to such functions.

(3) The list of purposes at sub-paragraph (2) may be amended by regulations made by the Committee.

(4) Any regulations made under the provisions of subparagraph (3) shall not have effect unless and until approved by a resolution of the States.

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<sup>x</sup> Order in Council No. VI of 2010; amended by the Charities and Non-Profit Organisations (Registration) (Sark) (Amendment) Ordinance, 2011.

<sup>y</sup> Order in Council No. XXXIV of 1994; amended by Order in Council No. I of 2001; No. XV of 2002; No. XIII of 2010; No. XIX of 2012; Alderney Ordinance No. V of 1995; Alderney Ordinance No. I of 1996; Alderney Ordinance No. II of 1997; Ordinance No. XXXIII of 2003; Alderney Ordinance No. XI of 2007; Alderney Ordinance No. XVII of 2008; Ordinance No. VII of 2009; Alderney Ordinance No. VI of 2009; Alderney Ordinance No. XIV of 2010; Alderney Ordinance No. I of 2011; Alderney Ordinance No. XV of 2011; Alderney Ordinance No. VIII of 2012; Alderney Ordinance No. XIV of 2013; Ordinance No. IX of 2016.

**Power of Commission and Economic Crime Division to inspect Register.**

3. (1) Without prejudice to the provisions of this Schedule and to the powers and duties of the Registrar, the Register must at all times be open to the inspection of the Commission and the Economic Crime Division, for the purpose of the carrying out of their functions.

(2) The Committee may by regulations make such provision as it thinks fit in respect of the inspection of the Register under subparagraph (1), including (but not limited to) provision with the purpose of ensuring that such inspection does not risk damage to the confidentiality and security of the Register.

(3) For the avoidance of doubt, the power of the Committee to make regulations under subparagraph (2) is without prejudice to the power of the Registrar to make regulations under section 38 (Regulations made by the Registrar).

**Power of Registrar to request and obtain information and documents.**

4. (1) The Registrar may, by notice in writing served on a person other than a regulated person or a regulated relevant legal person, require him to provide the Registrar in such form and manner, 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 Registrar may reasonably require for the performance of his functions.

(2) The Registrar may, by notice in writing served on a person other than a regulated person or a regulated relevant legal person -

- (a) require him to produce, in such form and manner, within such time and at such place as may be specified in the notice, such information or documents of such

description as may be so specified, for the purposes of the Registrar inspecting them,

- (b) require him to furnish, to any of the Registrar's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents or information and documents of such description as the officer, servant or agent may specify, either forthwith or within such time, and at such place, and in such form and manner, as may be so specified, for the purposes of their inspecting them,

being information or documents reasonably required by the Registrar for the performance of his functions.

(3) Where under subparagraph (2) the Registrar or any officer, servant or agent thereof has power to require the production of any information or documents from a person, the Registrar or that officer, servant or agent has the like power to require the production of that information or 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 powers conferred by this paragraph to require a person to produce any documents include power -

- (a) if the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar is satisfied that the taking of such copies or

extracts is necessary for the proper exercise of powers under or in relation to Part 4 (Enforcement) of this Law, 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) The powers conferred by this paragraph to require a person to provide any information include power to require that person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matters in relation to which the production of the information may be required.

(6) A statement made by a person in response to a requirement imposed by or under this paragraph -

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against him in criminal proceedings except -

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (ii) in proceedings for -

- (A) an offence under section 18,
- (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
- (C) perjury, or
- (D) perverting the course of justice.

(7) A notice under this paragraph shall state the grounds of the Registrar's decision to serve the notice and give particulars of the right to apply to the Court conferred by section 32 (General right to apply to Court to set aside action of Registrar).

**Provision of information to the Registrar.**

5. (1) Information required to be provided to the Registrar under this Law or any other enactment shall be in such form as may be specified by the Registrar.

(2) Where a person claims a lien on a document, its production under this Law is without prejudice to his lien.

**Tipping off.**

6. (1) A person is guilty of an offence if a notice is served on him under paragraph 4, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the service of that notice.

(2) Nothing in subparagraph (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of or in connection with legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subparagraph (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this paragraph, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subparagraph (1).

**Rectification of the Register.**

7. (1) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit -

- (a) on an application by or on behalf of a relevant legal person or the officers or members of a relevant legal person,
- (b) on an application by or on behalf of a resident agent,
- (c) on an application by or on behalf of any other person,  
or
- (d) of his own motion,

rectify any error or formal defect in the Register.

(2) Where the Registrar rectifies the Register in respect of a relevant legal person or other person, he shall give notice of that rectification to the relevant legal person or that other person (as the case may be).

(3) Except where the Registrar directs otherwise, the effect of rectification of the Register is that the error or defect in question shall be deemed never to have been made.

**General power of Registrar to reject applications etc.**

8. Notwithstanding that the Registrar is not bound to enquire further as to whether the provisions of this Law or any other enactment have been complied with, the Registrar may reject any application, or other matter submitted to him, on such terms and conditions as he thinks fit, if it appears to him that the provisions of this Law or any other enactment in respect of that application or other matter have not been complied with.

**Retention of information on the Register after dissolution, etc.**

9. In the case of a relevant legal person that has been dissolved, terminated or struck off, the Registrar shall retain on the Register information relating to that legal person as at the date of its dissolution, termination or striking off (as the case may be) for the minimum retention period after that date.

SCHEDULE 3  
RESIDENT AGENT PROVISIONS IN FOUNDATIONS LAW

Section 21(8).

"SCHEDULE 1A  
RESIDENT AGENTS

**Resident agents.**

1. (1) Subject to subparagraph (2), every foundation shall have a resident agent who is either -

(a) an individual, resident in Guernsey, who is a foundation official, or

(b) a corporate services provider.

(2) A foundation is exempted from the requirement contained in subparagraph (1) to have a resident agent if the foundation is a member of a class of foundations prescribed for this purpose by the Committee.

(3) A resident agent may request copies of -

(a) the records of the foundation, and

(b) any other information or documents necessary for the resident agent to comply with his duties as a licensed fiduciary,

at any time, by making a request in writing to the Council (see Schedule 1,

paragraph 23 and see also section 22).

- (4) The Committee may, by regulations, amend this paragraph.

**Record of resident agent.**

2. (1) A foundation shall keep a record of its resident agent, which shall comprise -

- (a) in the case of a resident agent who is an individual, his name,
- (b) otherwise, the resident agent's -
  - (i) corporate or firm name, and
  - (ii) address.

(2) A foundation must, within 14 days after the date of the occurrence of -

- (a) any change in its resident agent, or
- (b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(3) A foundation which fails to comply with subparagraph (1) or (2) is guilty of an offence.

**Duties of resident agent on registration.**

3. (1) Before an application is made for the registration of a foundation the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that foundation, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the foundation (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken reasonable steps to verify that information, and
- (c) serve copies of the statements on –
  - (i) the foundation, and
  - (ii) upon request, the proposed first foundation officials.

(2) In this paragraph, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law.

**Restriction of interests for failure to disclose beneficial ownership.**

4. (1) This paragraph applies when, in the opinion of the resident agent of a foundation, a beneficiary of the foundation or a beneficial owner in relation to the foundation has -

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,
- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances where those sections apply), or
- (c) made a statement under those sections which is false, deceptive or misleading in a material particular.

(2) This paragraph also applies when, in the opinion of the Registrar of Beneficial Ownership, a beneficiary of a foundation or a beneficial owner in relation to a foundation has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(3) When this paragraph applies by virtue of subparagraph (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subparagraph (1), and when this paragraph applies by virtue of subparagraph (2), the Registrar of Beneficial Ownership may notify the Registrar

of the failure referred to in subparagraph (2); and a resident agent who fails to comply with a duty under this subparagraph is guilty of an offence.

(4) On the Registrar receiving a notification under subparagraph (3), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may place such restrictions as he thinks fit on rights attaching to the relevant beneficiary's interest in the foundation; and a foundation which fails to comply with or give effect to restrictions placed on rights attaching to beneficiary's interest under this subparagraph is guilty of an offence.

(5) For the avoidance of doubt, when the Registrar places restrictions on a beneficiary's interests under subparagraph (4) he must notify the beneficiary and the foundation.

(6) Any restriction under subparagraph (4) is removed if the foundation is terminated.

(7) A beneficiary may apply to the Royal Court to set aside any restriction under subparagraph (4).

(8) The Royal Court shall not hear an application under subparagraph (7) unless satisfied that the foundation has been notified of the date and time of the hearing.

(9) The Royal Court may make an order on such terms and conditions as it thinks fit on an application under subparagraph (7).

(10) For the avoidance of doubt, this paragraph is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law.

**Disclosure of beneficial ownership information by resident agent.**

5. (1) The resident agent shall, on receipt of a certificate described in subparagraph (2), disclose to (as the case may be) -

- (a) Her Majesty's Procureur,
- (b) the Commission,
- (c) a police officer, or
- (d) a customs officer,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Schedule and any other information he holds in respect of the beneficial ownership of a foundation.

(2) The certificate referred to in subparagraph (1) is a certificate signed by -

- (a) Her Majesty's Procureur,

- (b) the Director General of the Guernsey Financial Services Commission,
- (c) the Chief Officer of the salaried police force of the Island of Guernsey, or
- (d) the Chief Officer of Customs and Excise,

(as the case may be) or any person appointed by any of them for that purpose.

- (3) The certificate shall state -
  - (a) what information is required,
  - (b) that the information is required for the purpose of -
    - (i) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere,
    - (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,
    - (iii) the initiation or bringing to an end of any such investigation or proceedings, or

(iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and

(c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this paragraph prejudices any power to disclose information which exists apart from this paragraph.

(5) The information that may be disclosed by virtue of this paragraph includes information obtained before this Law came into force.

(6) A resident agent who without reasonable excuse -

(a) fails to comply with this paragraph, or

(b) makes a statement, in response to a certificate under this paragraph, which is misleading in a material particular, false or deceptive,

is guilty of an offence.

**Tipping off.**

6. (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under paragraph 5 in respect of a foundation for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subparagraph (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of or in connection with legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subparagraph (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this paragraph, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subparagraph (1).

**Privileged information.**

7. (1) Nothing in this Schedule compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an Advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Schedule has effect notwithstanding any obligation as to confidentiality or other restriction on 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."

SCHEDULE 4  
AMENDMENTS TO OTHER ENACTMENTS

Section 22.

**Amendments to the Financial Services Commission Law.**

1. (1) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 is amended as follows.

(2) In section 21(2), delete "or" at the end of paragraph (f), for "." " at the end of paragraph (g) substitute ";", and after paragraph (g) insert –

"(h) to enable the Registrar of Beneficial Ownership of Legal Persons, the Registrar of Companies, the Registrar of Limited Liability Partnerships, the Registrar of Foundations, the Greffier, or the Registrar for the purposes of the Companies (Alderney) Law, 1994 -

(i) to carry out their functions relating to the beneficial ownership of legal persons, or

(ii) to investigate matters relating to such functions."

(3) In section 24, in the definition of "prescribed Laws" at the appropriate place insert –

"(hb) the Beneficial Ownership of Legal Persons

(Guernsey) Law, 2017,

- (hc) the relevant legal person Laws within the meaning of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017".

**Amendments to the regulatory Laws, etc.**

2. (1) In the Protection of Investors (Bailiwick of Guernsey) Law, 1987, in paragraph 1 of Schedule 4, after (1)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(2) In the Banking Supervision (Bailiwick of Guernsey Law, 1994, in paragraph 3 of Schedule 3, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(3) In the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in paragraph 3 of Schedule 1, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

and after (2)(h) insert –

"(ha) his record of compliance with any provision

contained in or made under the Limited Liability Partnerships (Guernsey) Law, 2013 in acting as a corporate services provider or a resident agent within the meaning of that Law,".

(4) In the Insurance Business (Bailiwick of Guernsey) Law, 2002, in paragraph 3 of Schedule 7, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(5) In the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, in paragraph 3 of Schedule 4, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(6) In the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, in the definition of "prescribed Laws" at section 42(1), after paragraph (ga) insert –

"(lb) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(7) In the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, in the definition of "relevant enactments" at section 32(1), after paragraph (la) insert –

"(lb) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

**Amendments to the Proceeds of Crime Law.**

3. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>z</sup> is amended as follows.

(2) After section 49D, insert –

**"Compliance with beneficial ownership obligations.**

49DA. (1) The Committee may by regulation prescribe supervisory authorities in respect of the duties and requirements to be complied with under the Beneficial Ownership Law and other enactments relating to the beneficial ownership of legal persons by regulated persons within the meaning of the Beneficial Ownership Law.

(2) The Committee may by regulation provide for the provisions of section 49B to apply *mutatis mutandis* to, and in respect of, premises in the Bailiwick owned, leased or otherwise controlled or occupied by a regulated person within the meaning of the Beneficial Ownership Law, and the officers, servants and agents of such a person.

(3) For the avoidance of doubt, the power to make

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<sup>z</sup> Order in Council No. VIII of 1999; amended by No. I of 2000; No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Recueil d'Ordonnances Tome XXVIII, p. 266; Ordinance No. XII of 2002; No. XXXIII of 2003; No. XLVII of 2007; No. XXXVII of 2008; Nos. XVI and XXXIV of 2010; No. XVII of 2014; No. IX of 2016; G.S.I. No. 56 of 1999; G.S.I. Nos. 4 and 27 of 2002; G.S.I. No. 33 of 2007; G.S.I. Nos. 48 and 73 of 2008; G.S.I. No. 12 of 2010; G.S.I. No. 14 of 2013; and G.S.I. No. 45 of 2016.

regulations under subsection (1) may be exercised in relation to all regulated persons and regulated relevant legal persons, or in relation to all such persons subject to specified exceptions, or in relation to any specified cases or classes of such persons; and the power to make regulations under subsection (2) may be exercised in relation to all regulated persons, or in relation to all such persons subject to specified exceptions, or in relation to any specified cases or classes of such persons."

(3) In section 52, at the appropriate place insert –

**"the Beneficial Ownership Law"** means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".