

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE PREVENTION OF CORRUPTION (BAILIWICK OF GUERNSEY) (AMENDMENT) LAW,
2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

EXPLANATORY MEMORANDUM

This Law amends the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 to create a new offence of a commercial organisation failing to prevent bribery by its employees, or by other persons who perform services for it, or on its behalf. It provides that it is a defence for a commercial organisation to prove that that it had procedures in place designed to prevent such conduct occurring.

PROJET DE LOI

ENTITLED

The Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023

THE STATES, in pursuance of their Resolution of the 30th September, 2022^a, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of the 2003 Law.

1. (1) The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003^b is amended as follows.

(2) After section 5, insert -

"Offence of failure of commercial organisation to prevent bribery.

5A. (1) A relevant commercial organisation ("C") is guilty of an offence under this section if an agent or other person ("A") associated with C bribes another person intending -

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct

^a Article X of Billet d'État No. XVII of 2022.

^b Order in Council No. I of 2004; this enactment has been amended.

of business for C.

(2) It is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct ("**prevention procedures**").

(3) For the purposes of this section, A bribes another person if, and only if, A is, or would be, guilty of an offence under section 1 (whether or not A has been prosecuted for such an offence).

(4) For the purposes of this section, A is associated with C if (disregarding any corrupt gift, consideration or advantage under consideration) A is a person who performs services for or on behalf of C.

(5) The capacity in which A performs services for or on behalf of C is immaterial, and may include, but is not limited to, A being employed by C.

(6) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances, and not merely by reference to the nature of the relationship between A and C.

(7) Where A is employed by C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

(8) A relevant commercial organisation guilty of an offence under this section is liable on conviction to a fine.

(9) In this section -

"**relevant commercial organisation**" means -

- (a) a body which is incorporated under the law of any part of the Bailiwick and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the Bailiwick,
- (c) a partnership which is formed under the law of any part of the Bailiwick and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the Bailiwick,

and for these purposes "**partnership**" means -

- (a) a partnership within the Partnership (Guernsey) Law, 1995 or the Partnership (Alderney) Law, 2021, or
- (b) a limited partnership registered under the Limited Partnerships (Guernsey) Law 1995, or the Limited Partnerships (Alderney) Law, 2021,

or a firm or entity of a similar character formed under the law of a country or territory outside the Bailiwick.

Publication of Guidance.

5B. (1) Subject to subsection (3), the States of Guernsey Committee for Home Affairs ("**the Committee**") shall publish guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 5A(2), and a court may take such guidance into account when determining whether a relevant commercial organisation had adequate prevention procedures in place.

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section."

(3) For section 6, substitute -

"Offences by bodies corporate and partnerships: liability of officers, etc.

6. (1) Where an offence under this Law is committed by a body corporate or 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) any director, manager, secretary or other similar officer, or any foundation official, of the body corporate,

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

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

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

(3) Where any such offence 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."

Citation.

2. This Law may be cited as the Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023.

Commencement.

3. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.