



BILLET D'ÉTAT

WEDNESDAY, 31st OCTOBER, 2001

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BILLET D'ÉTAT

**TO THE MEMBERS OF THE STATES OF
THE ISLAND OF GUERNSEY**

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 31st OCTOBER, 2001, at 10.00 a.m.**

PROJET DE LOI

ENTITLED

**THE HOUSING (CONTROL OF OCCUPATION) (AMENDMENT) (GUERNSEY)
LAW, 2001**

The States are asked to decide:—

I.— Whether they are of opinion to approve the Projet de Loi entitled “The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2001”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

ENTITLED

THE COMPANIES (GUERNSEY) (AMENDMENT) LAW, 2001

The States are asked to decide:—

II.— Whether they are of opinion to approve the Projet de Loi entitled “The Companies (Guernsey) (Amendment) Law, 2001”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

ENTITLED

**THE EMPLOYMENT PROTECTION (SUNDAY SHOP WORKING) (GUERNSEY)
LAW, 2001**

The States are asked to decide:—

III.— Whether they are of opinion to approve the Projet de Loi entitled “The Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

ENTITLED

THE HOTEL CASINO CONCESSION (GUERNSEY) LAW, 2001

The States are asked to decide:—

IV.— Whether they are of opinion to approve the Projet de Loi entitled “The Hotel Casino Concession (Guernsey) Law, 2001”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE GAMBLING (CASINO GAMING) ORDINANCE, 2001

The States are asked to decide:—

V.— Whether they are of opinion to approve the draft Ordinance entitled “The Gambling (Casino Gaming) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE ADOPTION (AMENDMENT) (GUERNSEY) LAW, 2000 (COMMENCEMENT AND CONSEQUENTIAL AMENDMENT) ORDINANCE, 2001

The States are asked to decide:—

VI.— Whether they are of opinion to approve the draft Ordinance entitled “The Adoption (Amendment) (Guernsey) Law, 2000 (Commencement and Consequential Amendment) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE ALDERNEY (APPLICATION OF LEGISLATION) (ADOPTION) ORDINANCE, 2001

The States are asked to decide:—

VII.— Whether they are of opinion to approve the draft Ordinance entitled “The Alderney (Application of Legislation) (Adoption) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE SUMMER TIME (GUERNSEY) ORDINANCE, 2001

The States are asked to decide:—

VIII.— Whether they are of opinion to approve the draft Ordinance entitled “The Summer Time (Guernsey) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE ROYAL BANK OF SCOTLAND INTERNATIONAL LIMITED (BAILIWICK OF GUERNSEY) LAW, 2001 (COMMENCEMENT) ORDINANCE, 2001

The States are asked to decide:—

IX.— Whether they are of opinion to approve the draft Ordinance entitled “The Royal Bank of Scotland International Limited (Bailiwick of Guernsey) (Commencement) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE NOXIOUS WEEDS (AMENDMENT) ORDINANCE, 2001

The States are asked to decide:—

X.— Whether they are of opinion to approve the draft Ordinance entitled “The Noxious Weeds (Amendment) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

**THE SOCIAL INSURANCE (RATES OF CONTRIBUTIONS AND BENEFITS, ETC.)
ORDINANCE, 2001**

The States are asked to decide:—

XI.— Whether they are of opinion to approve the draft Ordinance entitled “The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

**THE SUPPLEMENTARY BENEFIT (IMPLEMENTATION) (AMENDMENT)
ORDINANCE, 2001**

The States are asked to decide:—

XII.— Whether they are of opinion to approve the draft Ordinance entitled “The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

**THE CENTRAL OUTDOOR ASSISTANCE BOARD REGULATIONS (AMENDMENT)
ORDINANCE, 2001**

The States are asked to decide:—

XIII.— Whether they are of opinion to approve the draft Ordinance entitled “The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE FAMILY ALLOWANCES ORDINANCE, 2001

The States are asked to decide:—

XIV.— Whether they are of opinion to approve the draft Ordinance entitled “The Family Allowances Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE ATTENDANCE AND INVALID CARE ALLOWANCES ORDINANCE, 2001

The States are asked to decide:—

XV.— Whether they are of opinion to approve the draft Ordinance entitled “The Attendance and Invalid Care Allowances Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE EUROPEAN COMMUNITIES (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2001

The States are asked to decide:—

XVI.— Whether they are of opinion to approve the draft Ordinance entitled “The European Communities (Bailiwick of Guernsey) (Amendment) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

THE SARK GENERAL PURPOSES AND ADVISORY COMMITTEE (TRANSFER OF FUNCTIONS) (GUERNSEY) ORDINANCE, 2001

The States are asked to decide:—

XVII.— Whether they are of opinion to approve the draft Ordinance entitled “The Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001”, and to direct that the same shall have effect as an Ordinance of the States.

STATES BOARD OF INDUSTRY

NEW MEMBER

The States are asked:—

XVIII.— To elect a member of the States Board of Industry, who need not be a sitting member of the States, to complete the unexpired portion of the term of office of Mr. D. R. Jehan, who has resigned as a member of that Board, namely, to the 31st May, 2003.

STATES ADVISORY AND FINANCE COMMITTEE

THE MATRIMONIAL CAUSES (COSTS AND FEES) ORDINANCE, 1981

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

30th August, 2001.

Dear Sir

The Matrimonial Causes (Costs and Fees) Ordinance, 1981

The Law Officers of the Crown have written to the Advisory and Finance Committee in the following terms:

“This Ordinance, as amended in 1994, specifies, in respect of proceedings in the Matrimonial Causes Division of the Royal Court, the fees payable to the Court and to Her Majesty’s Greffier and Her Majesty’s Sergeant, and the maximum advocates’ fees recoverable from the losing party by the party to whom the Court awards costs. Certain aspects of the Ordinance are now outdated and, after consultation with the Bailiff and the Bar, it is considered that the following changes to it need to be enacted.

1. Representations have been made on behalf of the Guernsey Bar Council that the basis on which recoverable advocates’ fees are assessed should be changed and brought into line with the provisions of the Royal Court (Costs and Fees) Rules, 2000.

Under the 1981 Ordinance, a maximum recoverable advocate’s fee is set out for each stage of the proceedings. For example, the maximum advocate’s fee recoverable for settling a petition is fixed at £80. The figure of £80 may bear no relation to what a client has to pay his or her advocate for performing the service; but that is the maximum amount they can recover from the other party if the Court eventually awards them costs.

Therefore, in spite of occasional amendments to the Ordinance to keep up with inflation, the Ordinance does not, and never has, allowed a successful party to litigation to recover the actual costs of litigation.

By only allowing a specific maximum figure, the Ordinance has the result that successful parties will only recover a proportion (and perhaps only a small proportion) of the costs actually incurred by them, thus running counter to one of the basic principles of the civil justice system which seeks to put parties who have been wronged back into the position they would have been had they not been wronged.

The Royal Court (Costs and Fees) Rules, 2000, which deals with costs and fees for all Royal Court civil proceedings other than matrimonial proceedings, scrapped the old system of a table of maximum fees for each stage of the proceedings and replaced it with the principle that all costs of proceedings should be recoverable provided that they are reasonable in amount and reasonably incurred.

This is subject to a maximum recoverable advocate’s fee of £156 per hour (a figure which is increased annually in line with inflation). It is also subject to the Royal Court’s overriding power to make directions as to the extent to which costs are to be recoverable.

Having discussed the matter with the Bailiff, who is in agreement, it is recommended that the States' approval should be sought for the 1981 Ordinance to be amended on the lines of the Royal Court (Costs and Fees) Rules, 2000 to incorporate the principle that all advocates' costs in matrimonial proceedings should be recoverable provided that they are reasonable in amount and reasonably incurred.

2. The question of whether costs are reasonable in amount and reasonably incurred is dealt with in the Royal Court (Costs and Fees) Rules, 2000, in cases of dispute between the parties, by taxation. The party against whom costs are awarded can apply to the judge who presided over the proceedings (or, if he is unavailable, to the Bailiff) for the costs to be taxed.

The presiding judge or Bailiff can appoint a Commissioner to assist in the taxation or conduct it himself. The person conducting the taxation can then make an award as to the payment of his own costs incurred in the course of the taxation.

It is recommended, again with the Bailiff's and the Bar Council's agreement, that a similar system of taxation should be established for matrimonial causes to replace the system laid down in the 1981 Ordinance, which relies on a taxation panel which was scrapped, in relation to other Royal Court proceedings, by the Royal Court (Costs and Fees) Rules, 2000.

3. The schedule to the 1981 Ordinance sets out, as well as maximum recoverable advocates' fees, the fees payable to the Court and to Her Majesty's Greffier and Her Majesty's Sergeant. The value of these fees has inevitably been eroded by inflation and in order to protect the public purse it is recommended, with the Bailiff's agreement, that they be increased as shown in the schedule to this letter. In each case the existing fee, as last fixed in 1994, is shown in italics. The proposed increases deal with inflation and bring the fees more rationally into line with the equivalent ones chargeable under the Royal Court (Costs and Fees) Rules, 2000.
4. The Court should be given an express power to waive court fees when dealing with questions involving children.
5. The Court should also be given an express power to award costs on a full or partial indemnity basis (eg, in cases where a party has pursued or defended an action frivolously or vexatiously) and to order the payment of security for costs.

In view of the extent of the proposed changes, it is anticipated that the 1981 Ordinance will be repealed and replaced in its entirety if the States approve the changes. The drafting of the new Ordinance would follow the general scheme of the Royal Court (Costs and Fees) Rules, 2000."

The Advisory and Finance Committee concurs with the views expressed by the Law Officers of the Crown and recommends the States to agree that The Matrimonial Causes (Costs and Fees) Ordinance, 1981 be replaced with a new ordinance on the lines set out above.

I should be grateful if you would lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully,

R. C. BERRY,

Senior Member,

Advisory and Finance Committee.

SCHEDULE

1. DESCRIPTION OF PROCEEDING OR MATTER	2. FEES PAYABLE TO COURT, GREFFIER & SERGEANT
1. Applications, including trials of causes or issues, whether defended or undefended: hearing of.	Court: £60 per hour or part thereof (provided that where the hearing lasts for one half hour or less the fee shall be £40). <i>[£60 per half day or part thereof (provided that where the hearing lasts for less than one hour the fee shall be £30). £30 for an undefended hearing (provided that where the hearing lasts for more than one hour the fee shall be the same as that payable for a defended hearing).]</i>
2. Commission: issuing of.	Greffier: £30. [£20]
3. Copy of decree or order: issuing of.	Greffier £15. [£5]
4. Declarations, sworn: examination by the Court of person who should have made.	Court: £40. [£30]
5. Document, including any item of correspondence, but not including petition and supporting documents filed therewith: filing.	Greffier: £15. [£10]
6. Final order: application for.	Court: £30. [£20]
7. Guardian of minor or person of unsound mind: appointment of.	Court: £30. [£20]
8. Interim injunctions: application for.	The fees specified in paragraph 12(b) of the Schedule to the Royal Court (Costs and Fees) Rules, 2000. (ie, £100, with formula for hearings over one hour) <i>[The fees specified in paragraph 24(b) of the Schedule to the Royal Court (Costs and Fees) Rules, 1990.]</i> (ie, £40, with formula for hearings over one hour)
9. Judicial separation, rescission of: witnessing declaration of.	Greffier: £15. [£10]
10. Medical inspection of parties: filing of inspector's report.	Greffier: £15. [£10]
11. Medical inspection of parties: issuing copy of inspector's report.	Greffier: £4.50 per A4 side or part thereof <i>[£1 per A4 side or part thereof]</i>

12. Notices: publication in La Gazette Officielle	Greffier: £15 and cost of publication. [£10 and cost of publication.]
13. Petition: filing (including supporting documents filed therewith).	Greffier: £50. [£20]
14. Petition, supplemental: filing (including supporting documents filed therewith).	Greffier: £20. [£5]
15. Search at Greffe.	Greffier: £10. [£5]
16. Service of notice of petition.	Sergeant: £30 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £18 otherwise. [£20 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £12 otherwise.]
17. Service of document other than notice of petition.	Sergeant: £30 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £18 otherwise. [£20 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £12 otherwise.]
18. Service: certificate of service.	Sergeant £10. [£5]
19. Service: sealing document to be served.	Greffier: £15. [£10]
20. Service: transmission of document to be served to His Excellency the Lieutenant-Governor.	Sergeant: £10. [£5]
21. Service: certificate of transmission of document to be served to His Excellency the Lieutenant-Governor.	Sergeant: £10. [£5]
22. Trial of cause or issue: listing of.	Greffier: £15. [£10]
23. Trial of cause or issue: reserving or setting down a date for.	Court: £60 per day or part thereof set down. Provided that: (a) if and only if the date is vacated on the 14th day before the appointed day (or earlier), the fee shall be refunded; (b) the fee shall be credited against any fee chargeable under paragraph 1. [No current fee.]

The States are asked to decide:—

XIX.— Whether, after consideration of the Report dated the 30th August, 2001, of the States Advisory and Finance Committee, they are of opinion:—

1. That the Matrimonial Causes (Costs and Fees) Ordinance, 1981, shall be replaced with a new Ordinance on the lines set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES ADVISORY AND FINANCE COMMITTEE**AMENDMENTS TO THE FINANCIAL SERVICES COMMISSION
(BAILIWICK OF GUERNSEY) LAW, 1987**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

27th September, 2001.

Dear Sir

**AMENDMENTS TO THE FINANCIAL SERVICES COMMISSION (BAILIWICK OF
GUERNSEY) LAW, 1987**Background

The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (the “Commission Law”) provides for the establishment, structure and functions of the Guernsey Financial Services Commission. The Commission commenced operations in February 1988 and has responsibility for the supervision and development of the finance sector in the Bailiwick of Guernsey. The Commission has undoubtedly been successful during its thirteen year life. The efficacy of the Commission’s policies and practices can be judged from the part it has played in the successful outcomes of the recent international evaluations of financial regulation and the anti-money laundering systems in the Bailiwick. These evaluations include:–

- (a) the United Kingdom Home Office Review of Financial Regulation in the Crown Dependencies;
- (b) the categorisation of Guernsey as a Group 1 jurisdiction by the G7 Financial Stability Forum;
- (c) the classification of Guernsey as a co-operative jurisdiction by the Financial Action Task Force on Money Laundering (“FATF”), the world’s most authoritative body on money laundering; and
- (d) the FATF-style Mutual Evaluation Review of the Anti-Money Laundering System in Guernsey by the Offshore Group of Banking Supervisors.

The Advisory and Finance Committee and the Commission are aware that the Commission Law and the structure and functions of the Commission under that law must be sufficiently robust to ensure equally successful conclusions to future evaluations. With the exception of a minor amendment to the confidentiality provisions in 1997 (and some other minor changes consequential upon the revision of other laws), the Commission Law has remained unchanged since it came into force. Consequently, the Advisory and Finance Committee and the Commission have reviewed the Commission Law in order to ascertain whether it is appropriate to amend any of its provisions.

After consultation with the Commission, the Committee proposes the following amendments to the Commission Law.

1. Structure and internal operation

1.1 Structure of the Commission

The Commission has five members who, in practical terms, act as a board. The Commission Law requires the Chairman to be the President for the time being of the Advisory and Finance Committee. The other four members are elected by the States from persons nominated by the Committee and appearing to the Committee to have knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick. None of these four members is a politician; each is a non-political professional. The day-to-day operation of the Commission is carried out by its staff, which is controlled by the Director General and four Directors.

Since the 1980s a large number of independent financial supervisory bodies have been established world-wide and there has been a growing consensus as to how the boards of such bodies should be structured. In large part this consensus has been driven by the main international financial supervisory bodies, the Basel Committee on Banking Supervision (“the Basel Committee”), the International Association of Insurance Supervisors (“the IAIS”) and the International Organization of Securities Commissions (“IOSCO”). The Commission is a member of the latter two bodies and is committed to meeting their criteria for membership and the policies they have established. The Commission is also committed to meeting the standards set by the Basel Committee. All three bodies are now well established and the policies they espouse have been adopted by supranational organisations such as the International Monetary Fund (“the IMF”) and the United Nations (“the UN”). The IMF has commenced reviews of a number of offshore finance centres; these reviews are based to a large degree on the standards set by the international regulatory bodies. With regard to the UN, the United Nations Office for Drug Control and Crime Prevention has written to political authorities around the globe, seeking a political commitment to policies and statements issued by a number of international and supranational organisations, including policies issued by the Basel Committee, the IAIS and IOSCO. The Advisory and Finance Committee has provided such a political commitment to the UN.

In order to ensure impartiality, the Basel Committee, the IAIS and IOSCO (and, by extension, the IMF and the UN) each require independence between the government of a jurisdiction on the one hand and the decisions made by that jurisdiction’s regulatory authorities on the other. The Advisory and Finance Committee has already considered the implications of this policy and has agreed, subject to approval by the States of Guernsey, that its President should not remain as a member of the Commission. (A suggestion to this effect was also made in the report arising from the United Kingdom Home Office Review of Financial Regulation.)

Hence, it is recommended that the Commission Law should be changed to state that all five members (including the position of Chairman) of the Commission will be elected by the States from persons nominated by the Advisory and Finance Committee and appearing to be persons having knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick.

The Advisory and Finance Committee will continue to:–

- (a) nominate all members of the Commission (and (see below) have power to recommend that a member be removed from office);

- (b) be able to request reports, advice and assistance from the Commission on any matter to do with finance business;
- (c) be able to request from the Commission recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings;
- (d) be able to request reports, advice (and (see below) statistical information) and assistance in relation to the exercise of the Committee's functions under any enactment relating to finance business; and
- (e) each year receive a report from the Commission on its activities during the preceding year. The President of the Committee is further required to submit that report for consideration by the States of Guernsey. The report has also contained the accounts of the Commission, which must be laid before the States in the same manner as the accounts of a committee of the States. This practice will continue.

The States of Guernsey will also continue to appoint the Commission's auditors.

1.2 Dismissal of Commission members

On a related issue, the Advisory and Finance Committee also agrees with the suggestion in the United Kingdom Home Office Review that the States of Guernsey should have power to dismiss, as well as elect, members of the Commission and that the Commission Law should specify the general terms on which members can be dismissed. Such a power of dismissal would increase the accountability of the Commission. The Committee suggests that the Commission Law should enable the Committee to ask the States to remove a member of the Commission, including the Chairman, if he or she is unable or unfit to discharge his or her functions as a member.

1.3 Audit arrangements

The Commission is included within the definition of "States interests" for the purposes of the Audit Commission (Guernsey) Law, 1997 ("the Audit Commission Law").

The Audit Commission was established under the Audit Commission Law with the following functions:—

- (a) to oversee, co-ordinate and evaluate the internal audit of States interests;
- (b) to receive, on behalf of the Committee, all reports made by external auditors of States interests;
- (c) to monitor the selection and application by States committees of accounting standards, accounting policies and accounting procedures;
- (d) to assist and encourage States committees, where appropriate by commissioning studies and reports, in the effective, efficient and economical management of States' assets and finances; and
- (e) to report to the Committee in relation to all of the above matters.

In recommending that the Commission should be included as a States interest in the Audit Commission Law, the Committee was mindful that the standards which companies and public bodies are expected to apply to the organisation and operation of resources had developed significantly since the Commission was established and were likely to continue to develop at a rapid pace. The Committee now considers it timely that the Commission Law should be extended to require the Commission to review annually (by the appointment of appropriately qualified external professionals or otherwise):–

- (a) the adequacy and application of the Commission's systems of internal control;
- (b) the selection and application of accounting policies and accounting procedures of the Commission;
- (c) the effective, efficient and economical management of the Commission's assets and resources;
- (d) compliance with such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the Commission;

and to require the members of the Commission to satisfy themselves in connection with the conclusions of the review. In light of the role of the Commission, its size, the level of its income and the responsibility of the Advisory and Finance Committee to safeguard all stakeholders in the finance sector, the Committee also recommends that the Commission should provide it with an annual report on the standards of its control systems and corporate governance. In addition, the Committee recommends that it should have locus in the Commission Law to appoint an independent person to review the Commission's control systems and corporate governance and report to the Committee with the results of that review. With regard to the international obligations on independence from government to which the Commission is subject, the Committee will consider the appropriateness of the relationship between the Audit Commission and the Commission when the role of the Audit Commission is reviewed. This review was referred to in Appendix I to Billet d'État VI for 28 March 2001 which contains the States Audit Commission's third annual report.

1.4 Miscellaneous other reforms relating to structure and internal operation

Other appropriate changes to the Commission Law in connection with its structure and internal operation include:–

- (a) the removal of the requirement for any deed, instrument, contract or other document to be sealed with the common seal of the Commission before it is deemed to have been duly executed by or on behalf of the Commission and effective in law to bind the Commission. The requirement to use the seal for such purposes is historic and does not sit well in an environment where electronic communication is common and in which the Electronic Transactions (Guernsey) Law, 2000 permits electronic signatures to be legally binding. The removal of such requirement to use the seal would still mean that a member or delegated officer of the Commission would have to sign a deed, instrument, contract or other document before it is effective in law to bind the Commission;
- (b) for the same reasons as those outlined above, the removal of the requirement for the Commission to use the common seal on an instrument in writing which delegates any function by the Commission to any of the Commission's members or officers;

- (c) the incorporation of certain explicit statements into the provisions which define which statutory functions the Commission may delegate to its members or officers. Currently, under the Commission Law, the Commission's ability to delegate its functions to its members and officers is circumscribed. The statutory functions which may not be delegated are those which:–
- (i) require the Commission to consider representations concerning a decision which it proposes to take;
 - (ii) empower the Commission to cancel, revoke or withdraw a registration, permission or authorisation;
 - (iii) empower the Commission to petition for the winding up of a body corporate.

It is recommended that paragraph (ii) be extended to include reference to suspensions, that additional explicit statements be incorporated into paragraph (ii) so that the ability of the Commission to cancel, revoke, withdraw or suspend a registration, permission or authorisation is extended to consents and licences and that such power can be delegated where such registration, permission, authorisation, consent or licence is voluntarily surrendered. The Commission issues licences under several pieces of legislation enacted since the Commission Law came into force. Under that same legislation the Commission has power to suspend licences. Accordingly, it is appropriate to add reference to licences and suspensions to those functions specified in the Commission Law as being functions which may not be delegated to the Commission's members or officers. In addition, officers of the Commission, acting as authorised signatories of the Committee, issue consents under Ordinances made under the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946.

While the Committee, rather than the Commission, remains responsible for the administration of the Control of Borrowing legislation, the Committee envisages that some or all of the transactions and other activities currently requiring consent under the Control of Borrowing legislation might, in due course, become the responsibility of the Commission. Accordingly, the Committee considers it appropriate to include explicit reference to these consents in the Commission Law. It is also appropriate to make the Commission Law more explicit that the power to take a registration, permission, authorisation, consent or licence away at the behest of a regulated person (that is, where it is voluntarily surrendered) can be delegated;

- (d) the introduction of the ability of the Chairman to dismiss a member of the Commission if he or she has been absent from meetings of the Commission for three consecutive meetings rather than a period longer than three months. This amendment takes account of the Commission's practice of routinely holding ten meetings each year;
- (e) the removal of the requirement of the Vice-Chairman to provide not less than one month's notice to the Chairman before resigning. The Committee considers that the Vice-Chairman should be able to resign simply by giving notice in writing to the Chairman;
- (f) the introduction of an enabling provision to permit Schedule 1 to the Commission Law (which deals with the members of the Commission; the Chairman of the Commission; tenure of office; resignation, removal and casual vacancies; Vice-Chairman of the Commission; oath of office; remuneration etc; procedure at meetings; disclosure of

interest; advisory committees; transactions of business without meeting; minutes; and residual power to regulate procedure) to be capable of amendment by Ordinance. Schedule 1 is mainly concerned with providing locus for the structure and operation of the Commission's members and, if political participation is to be removed as the criterion for appointing its Chairman, it is important for the States to possess the ability to amend Schedule 1 by Ordinance rather than by primary legislation. This amendment would enable the Bailiwick legislatures to more readily revisit the structure of the Commission and the operation of the Commission's members if developments, such as new standards issued by the international regulatory bodies, so require;

- (g) the incorporation of explicit statements to the effect that:–
 - (i) the Commission may appoint such officers and servants as it considers necessary for the carrying out of its functions, subject to the proviso that the most senior officer of the Commission will have the title of Director General;
 - (ii) appointments of officers and servants shall be made on such terms as to the conditions of service as the Commission thinks fit;
 - (iii) the Commission may make such arrangements as it thinks fit for the payment of benefits in respect of its officers and servants; and
- (h) a change in nomenclature so that members of the Commission will instead be described as Commissioners.

2. Functions

2.1 Proposed changes to Commission's functions

The Commission has general and statutory functions under the Commission Law.

The general functions of the Commission are:–

- (a) to take such steps as the Commission considers necessary or expedient for the development and effective supervision of finance business in the Bailiwick;
- (b) to provide for the Advisory and Finance Committee, or the Policy and Finance Committee of the States of Alderney, when either committee so requests, reports, advice and assistance on any matter connected with finance business;
- (c) to prepare and submit to the Advisory and Finance Committee or the Policy and Finance Committee either at the request of one of those committees or of its own motion, recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings; and
- (d) all such other functions as the States may by Resolution assign to the Commission.

The statutory functions of the Commission are:–

- (a) the functions transferred or assigned to it by legislation. This legislation includes, but is not limited to, the Insurance Business (Bailiwick of Guernsey) Laws, 1986 to 1999 (“the Insurance Business Laws”), the Protection of Investors (Bailiwick of Guernsey) Law,

1987 as amended (“the Protection of Investors Law”), the Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended (“the Banking Supervision Law”) and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Fiduciary Law”); and

- (b) to provide for the Advisory and Finance Committee, when the Committee so requests, reports, advice and assistance in relation to the exercise of its functions under any enactment relating to finance business.

During its existence, the Commission has become increasingly involved in the prevention of economic crime. Under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 1999 the Commission is responsible for issuing the Guidance Notes on the Prevention of Money Laundering. The Regulations and the Guidance Notes apply to a wide range of defined financial services businesses, including:–

- (a) any person or body carrying on or providing services in relation to the business of banking, bureaux de change, cheque cashers, insurance, investment, asset management or administration, trusteeship, company or trust formation and administration, the establishment of business enterprises or any matter ancillary to any such business;
- (b) any person providing services of the type referred to in paragraph (a) in the course of carrying on the profession of a lawyer unless such services are incidental to the provision of legal advice or services; and
- (c) any person providing services of the type referred to in paragraph (a) in the course of carrying on the profession of an accountant unless such services are incidental to the provision of accountancy advice or services.

In 1999 the Commission commenced a systematic programme of on-site visits to those financial services businesses it regulates in order to analyse the anti-money laundering standards of those businesses.

In addition, the Commission is responsible for supervising compliance with a number of the standards issued by FATF. The issue of the Guidance Notes on the Prevention of Money Laundering and on-site visits made to financial services businesses by the Commission assist the Commission to satisfy this responsibility.

In light of the Commission’s activities with regard to the prevention of economic crime, the Committee recommends that an additional general function should be added to the Commission Law, namely the function of the countering of financial crime. The Financial Services Authority, the main financial services regulatory body in the United Kingdom, has a similar function.

The Commission has undertaken two major projects during the last five years in that it had a significant involvement in establishing the Finance Training Agency (now merged with the Guernsey Training Agency to form the Training Agency) and the Channel Islands Stock Exchange, LBG. Significant resources, both in terms of staff time and finance, were devoted to the establishment of both bodies and the Commission also continues to help fund and provide staff resources to the Training Agency. The Commission was also involved with the establishment of the Guernsey Promotional Agency, LBG which will have responsibility for promoting the Bailiwick internationally. It is probable that the Commission will continue to

be involved with the establishment of new organisations. Such bodies include a financial services ombudsman and a Public Trustee. In light of the scale of the Commission's involvement in such bodies, the Committee is of the view that the Commission Law should be amended to emphasise that the Commission's role in the development of the finance sector includes (amongst other matters) the establishment and ongoing support of organisations whose own functions are important to the development of the finance sector, the improvement of the infrastructure of the finance sector, the protection of the public or the protection or enhancement of the Bailiwick as a financial centre.

Another, increasingly important, aspect of the Commission's activities is the collation and analysis of statistics. Since its establishment, the Commission has asked the finance sector to provide it with statistics in order to satisfy its responsibilities for both supervision and development. Statistical information is increasingly requested by third parties. On two occasions in the last thirteen years the Advisory and Finance Committee has requested the Commission to provide it with detailed statistical information relevant to the Committee's responsibilities. In the last two years the Commission has also been requested by the Bank for International Settlements and the International Monetary Fund to provide those bodies with quarterly and annual statistical information respectively; the Commission has approached the finance sector in order to be able to furnish these international bodies with the requisite information. In light of the foregoing, the Committee suggests that the Commission Law should be further amended to state explicitly that:–

- (a) the Commission may, in taking such steps as it considers necessary or expedient for the development of finance business in the Bailiwick, at the request of third parties, approach the finance sector for statistical information for analysis and onward transmission, where appropriate, to third parties;
- (b) the Commission may provide the Advisory and Finance Committee and the Policy and Finance Committee of the States of Alderney (and the General Purposes and Finance Committee of the Chief Pleas of Sark – see point 2.2 below), when such committee so requests, with statistical information as well as reports, advice and assistance on any matters connected with finance business; and
- (c) the Committee may make regulations:–
 - (i) requiring supervised persons to provide statistics requested by the Commission when carrying out its general functions; and
 - (ii) providing that it will be an offence, subject to a financial penalty, not to provide the Commission with such statistics.

In the exercise of its general functions, the Commission may take into account any matter which it considers appropriate, but shall in particular have regard to the following criteria:–

- (a) the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons carrying on finance business; and
- (b) the protection and enhancement of the reputation of the Bailiwick as a financial centre.

With regard to criterion (a), the Committee considers that the Commission should have regard to the wider concept of the public interest, not only the protection of the public. Accordingly, the Committee recommends that the words “the public interest, including” should be added to the beginning of criterion (a).

The Commission exercises all of its functions consistently and, on that basis, the Advisory and Finance Committee considers that the Commission Law should be amended so that it is explicit that the Commission may take into account criteria (a) and (b) above across all of its functions (ie its general and statutory functions and not only its general functions). In addition, under the Commission Law, the Commission may also appoint a committee to advise it on the exercise of its general functions. The Committee suggests that the Commission Law should state explicitly that the Commission may appoint committees to give advice as to the exercise of both its general and statutory functions and on any other matter of relevance to the Commission (such as control systems and corporate governance).

2.2 Sark and Alderney

As indicated in point 2.1 above, the general functions of the Commission include providing the Advisory and Finance Committee and the Policy and Finance Committee of the States of Alderney with reports, advice and assistance on any matter concerned with finance business at the request of these committees. Indeed, the Advisory and Finance Committee has requested the Commission to provide a significant volume of reports, advice and assistance in the last four years in order to address the international challenges facing Guernsey and, equally importantly, so that the Committee can meet its own responsibilities in ensuring that Guernsey continues to meet its international commitments. In addition, the Commission's functions include the preparation and submission of recommendations and schemes for the statutory regulation of finance business and generally for the revision of legislation appertaining to companies and other forms of business undertakings at the request of one of these committees or at the Commission's own instigation.

The Advisory and Finance Committee considers the General Purposes and Finance Committee of the Chief Pleas of Sark should possess similar powers in its relationship with the Commission as those described above for the Alderney Policy and Finance Committee. When the Commission Law was enacted, in practical terms, in Sark, only clearing banks fell under the Commission's regulatory aegis. However, recent extensions of the Protection of Investors Law and the Insurance Business Laws, together with the recent introduction of the Fiduciary Law leads the Committee to conclude that an appropriate political authority in Sark should have an explicit and formal relationship with the Commission as outlined above. This relationship was also advocated by the Advisory and Finance Committee in proposals for the Fiduciary Law contained in Billet d'État XII which were approved by the States at their meeting on 1 June 2000.

It is also proposed to incorporate a relationship between the Alderney Policy and Finance Committee and the Sark General Purposes and Finance Committee with the Commission in one other important area, that of fees. Currently, in relation to the Commission's statutory functions, the Commission Law provides that the Commission may be paid fees of such amounts, by such persons and in such manner, as may be specified by or under the enactment under which that statutory function is exercised. The Banking Supervision Law, the Insurance Business Laws and the Protection of Investors Law provide that the Advisory and Finance Committee may (and, in respect of fees payable under the Banking Supervision Law, after consultation with the Commission) by regulation prescribe fees to be payable to the Commission. However, the Fiduciary Law introduced a different system for prescribing fees in respect of licences issued under that Law. With regard to fiduciary licences, the Commission may, after consultation with the Advisory and Finance Committee, the Policy

and Finance Committee and the General Purposes and Finance Committee, by regulation prescribe the fees payable to it. The reason for this change was provided in a policy letter in Billet d'État XXIII which the States of Guernsey considered on 29 November 2000; the Sark General Purposes and Finance Committee had made it clear that it would be unacceptable to the Chief Pleas for the Advisory and Finance Committee to make regulations which would bind Sark fiduciaries on administrative matters such as fees. In light of this and the other changes recommended in this policy letter, the Advisory and Finance Committee considers that the Banking Supervision Law, the Insurance Business Laws and the Protection of Investors Law should be further amended to provide that regulations regarding fees should be made by the Commission after consultation with the Advisory and Finance Committee, the Policy and Finance Committee and the General Purposes and Finance Committee.

3. Disclosure of Information

The Committee considers it appropriate for the Commission's ability to provide information to third parties to be extended.

3.1 Disclosure of information to other jurisdictions

3.1.1 Circumstances in which Commission can disclose information

The Commission Law provides that any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions must be regarded as confidential by the Commission and by its members, officers and servants. No such information can be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure appears to the Commission to be necessary:–

- (a) to enable the Commission to carry out any of its statutory functions;
- (b) in the interests of the prevention or detection of crime;
- (c) in connection with the discharge of any international obligation to which the Bailiwick is subject;
- (d) to assist, in the interests of the public, any authority which appears to the Commission to exercise in a place outside the Bailiwick functions corresponding to those of the Commission; or
- (e) to comply with the directions of any division of the Royal Court.

Internationally, regulatory bodies are increasingly being evaluated against their ability to co-operate with regulatory and law enforcement bodies in other jurisdictions. In this regard, the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001, which came into force on 7 August 2001, amends two aspects of the insider dealing legislation in Guernsey which were considered internationally to be an impediment to co-operation.

The importance attached to co-operation by regulatory bodies can be seen in the publication of a document entitled "Ten Key Principles for the Improvement of International Cooperation Regarding Financial Crime and Regulatory Abuse" by the G7 Ministers' Working Group on

Financial Crime and in recent activity by FATF in reports published in June 2000 and June 2001. A number of countries and territories were listed by FATF as being non-co-operative in the fight against money laundering and several jurisdictions such as Canada, France, the United States of America and Guernsey have issued notices to financial services businesses advocating caution when dealing with institutions based in those countries or territories. This position has also been endorsed by the European Council of Finance Ministers. Such global action emphasises the importance of regulatory bodies being considered to be co-operative by the international community.

Furthermore, the Basel Committee, the IAIS and IOSCO include the requirement to be co-operative amongst their criteria for membership and have in the last three years issued overarching principles which should be followed by their membership and by regulatory bodies which have adopted their policies. These principles detail the importance of co-operation.

All of the external reviews of Guernsey's regulatory and anti-money laundering systems, have examined the Commission's ability to co-operate with regulatory and law enforcement bodies in other jurisdictions. It should be emphasised that the international regulatory bodies not only recognise, but require, information held by regulators to be confidential but there is a desire to see, embodied in legislation, statements evidencing a jurisdiction's willingness to co-operate with others and appropriate means to fulfil that willingness.

In order to ensure that Guernsey continues to remain in good standing with the international community, the Advisory and Finance Committee considers that information possessed by the Commission should remain confidential but that the gateways in the Commission Law through which information can be disclosed should be amended in the following ways:–

- (i) paragraph (a) above should be amended to permit the Commission to disclose information to enable it to carry out any of its statutory or general functions;
- (ii) paragraph (b) above should be amended to permit the Commission to disclose information in the interests of the prevention, detection, investigation of crime or the instigation of or otherwise of any criminal proceedings;
- (iii) paragraph (d) above should be amended to permit the Commission to provide information, in the interests of the public or otherwise, to any authority which appears to the Commission to exercise in a place outside the Bailiwick any functions corresponding to those of the Commission.

The consultation paper for the regulation of fiduciaries and administration business issued by the Commission in May 1999 stated:–

“Considerable thought has been given as to what happens to the trusts whose trustees are refused a licence under the provisions of the Law, or whose trustees have been granted a licence which is subsequently revoked. The Commission is strongly of the opinion that an office of Public Trustee should be set up as soon as possible.”

In this connection, the Commission has been working with the Law Officers in order to provide the Committee with detailed proposals as to how the office of Public Trustee will function in practice and what provisions should be contained in the proposed law governing the establishment and operation of the Public Trustee. The Commission expects to provide the Committee with these detailed proposals by the end of the year. The Commission's view is that most applications to the Public Trustee asking it to take over the trusteeship of trusts, will

originate from the Commission. Accordingly, the Committee concurs with the Commission's view that the gateways in the Commission Law through which information can be transmitted should be extended to allow the Commission to pass information to any Public Trustee.

3.1.2. Organisations with whom Commission can share information

It is also now appropriate for the Commission Law to specify that the Commission must take such steps as it considers appropriate to co-operate with other persons:—

- (a) who have functions similar to any of those exercised by the Commission; and
- (b) in relation to the prevention, detection or investigation of crime or the instigation of or otherwise of any criminal proceedings;

and that such co-operation may include the sharing of information which the Commission is not prevented from disclosing.

These two proposed additional statements are an explicit iteration of the assistance and co-operation already provided in relation to the prevention or detection of crime by the Commission to foreign regulatory and law enforcement agencies. The importance of the statements lies in their explicitness and, as a result, the positive message they provide to the international community.

3.2 Exchange of information with States Committees

At the same time, it is desirable to revise the Commission's ability to exchange information communicated to the Commission by a committee of the States. The Commission Law states that such information shall be regarded as confidential, if that committee of the States so requests, by the Commission and by its members, officers and servants; no such information may be disclosed except in compliance with the directions of any division of the Royal Court. The Committee suggests that this section of the Law should also state that:—

- (i) a committee of the States may disclose information to the Commission's members, officers and servants (as well as the Commission);
- (ii) in addition to compliance with directions of the Royal Court, the Commission may disclose information, with the leave of the relevant committee, for any reason set out in paragraphs (a) to (d) of paragraph 3.1.1; and
- (iii) similar relationships concerning the confidentiality and disclosure of information should be established between the Commission and committees of the States of Alderney and Chief Pleas of Sark.

The main objective of these suggestions is to provide the Advisory and Finance Committee with locus to give permission to the Commission to disclose information which arises as a result of the activities of Commission executives under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991. The functions transferred to Commission staff under this law include the day-to-day work involved with administering the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946 and Ordinances made thereunder. The main work undertaken by the Commission under the Control of Borrowing legislation involves the supervision of closed-ended collective investment funds and the vetting of applications to form Guernsey and Alderney companies.

3.3 Contravention of disclosure provisions

The Commission Law goes on to state that a person who discloses information or who causes or permits the disclosure of information, in contravention of the Law is guilty of an offence and liable:–

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
- (b) on a summary conviction, to a fine not exceeding level 4 on the uniform scale.

The Committee agrees with the suggestion in the United Kingdom Home Office Review of Financial Regulation that the Commission Law should provide a defence of due diligence. This means that the above penalties would continue to apply only if confidential information were to be disclosed without reasonable excuse and that it would be a defence for a person to show that all reasonable steps and due diligence had been taken to avoid committing an offence or that a person did not know and had no reason to suspect that the information was confidential information. This change would also be in accordance with the international standards that apply to the wrongful disclosure of information by regulatory bodies.

However, the penalty on summary conviction has also fallen behind what is expected of an authority such as the Commission. The Committee proposes that the penalty on a summary conviction should be increased to a fine not exceeding level 5 on the uniform scale (currently £5,000), to imprisonment for a term not exceeding 3 months or to both. The Committee also proposes that the one other fine in the Commission Law which may be imposed on summary conviction (a fine not exceeding level 4 on the uniform scale for members of the Commission found guilty of violating the oath or affirmation which a member is required to provide before the Royal Court before discharging any function under the Commission Law) should be increased to a fine not exceeding level 5 on the uniform scale.

4. Loans

It would be useful for the Commission to have the ability to lend money. Such a facility would be helpful in that, potentially, it would enable the Commission to undertake large-scale and costly projects, such as those mentioned in section 2.1 above, and to recoup some or all of the cost of those projects. Historically, the cost of major projects sponsored and funded by the Commission has had to be written off. The Commission has confirmed to the Committee that the power to lend money would not mean that it would automatically seek to fund major projects by way of a loan; it would simply enable the Commission to have available another avenue of monetary support and allow it to judge whether its funds would best be used to support a project by way of unrefundable payments (as has been the case in the past) or by the way of a loan.

The Commission might financially support the establishment of a number of organisations and while their potential ability to repay a loan would be an important feature in the Commission's consideration of the funding arrangements, there would be other factors to consider such as the potential conflicts of interest which may arise from a loan between these bodies and the Commission.

The Committee therefore recommends that the Commission Law should permit the Commission to lend money and that the aggregate amount outstanding by way of principal at any time should be no greater than one third of the Commission's fee income for the previous calendar year.

5. Borrowing

Under the Commission Law the Committee may make advances to the Commission from the States General Revenue Account. The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission may not exceed such sum as the States may determine by Resolution. In addition, no advance to the Commission may be made by the Committee except on such terms as the States may determine by Resolution. The Commission may not borrow except in accordance with these provisions.

The Committee considers that the Commission should be accorded commercial freedom and that, in addition to the receipt of advances from the Committee, the Commission should be able to borrow money from any other source thought appropriate by the Commission, provided that the aggregate amount outstanding by way of principal at any time from sources other than the Committee, is no greater than one third of the Commission's fee income for the previous calendar year.

6. Investment

Currently, the Commission may invest any of its funds which are not immediately required in any investment approved for the purpose by the Committee in writing. Again, in order to provide the Commission with commercial freedom, the Committee recommends that the Commission should be able to invest its funds as it wishes.

Consultation

The Commission Law, and the Commission's functions under it, applies throughout the Bailiwick. In this connection, the Committee has consulted with the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark. The Policy and Finance Committee and the General Purposes and Finance Committee agree with the Committee's recommendations.

Recommendations

The Advisory and Finance Committee therefore recommends the States to agree that the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 and other legislation should be amended as detailed in this report.

I should be grateful if you would lay this letter before the States together with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully

L. C. MORGAN

President
States Advisory and Finance Committee

The States are asked to decide:—

XX.— Whether after consideration of the Report dated the 27th September, 2001 of the States Advisory and Finance Committee, they are of opinion:—

1. That the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, and other legislation shall be amended as detailed in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES ADVISORY AND FINANCE COMMITTEE**CORRUPTION LEGISLATION
TERRORISM LEGISLATION**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

27th September, 2001.

Dear Sir

**CORRUPTION LEGISLATION
TERRORIST LEGISLATION**

Her Majesty's Procureur has written to the Advisory and Finance Committee in the following terms:

"I have recently been conducting a review of the Bailiwick's legislation relating to corruption and also terrorism. I have reached the conclusion that our current Laws are not comprehensive enough. The following paragraphs will explain my reasoning.

CORRUPTION LEGISLATION***Existing Law***

It is an unfortunate fact of life that some individuals are prepared to act corruptly by offering bribes to, for example a public official in order to win a government contract. It is clear that in some jurisdictions corruption is an extremely serious problem which has an adverse affect on the nation's economy. Fortunately, as far as I am aware, Guernsey appears, in this area of commercial life, to have remained corruption free. As a result of there being in the past no perceivable problem, the only criminal law offence which Guernsey currently has in place to deal with acts of corruption is under common law. The offence is limited in its scope. It may not apply to the corruption by someone in Guernsey of persons in a foreign country. In Alderney, in addition the Corruption (Alderney) Law, 1994 applies. That legislation is limited in its scope. It creates an offence of corruption in public life.

In recent years there has been a significant growth of interest in issues related to governance and corruption. This reflects, in part, increasing acceptance of the proposition that poor governance and corruption are corrosive of economic and social development. With the increasing globalisation of corruption, several international organisations and agencies including the UN General Assembly, the OECD, the IMF, the World Bank, the European Union, the Council of Europe and the International Chamber of Commerce, have mounted initiatives to improve governance and combat corruption. Many jurisdictions have revised their corruption legislation in order to ratify international conventions and demonstrate a serious commitment to pursue the fight against corruption.

I have concluded that it would be wholly inappropriate for Guernsey and Sark to carry on relying solely upon the common law and also that the Alderney legislation on corruption should be significantly extended. My reasons for reaching this conclusion are based partly upon recent international conventions and partly because of local considerations.

You will recollect that I drew the attention of the Panel to Review the Machinery of Government of Government to a White Paper entitled “Raising Standards and Upholding Integrity: The Prevention of Corruption – The Government’s Proposals for the Reform of the Criminal Law of Corruption in England and Wales” published by the Home Office in June 2000. The overriding consideration of Her Majesty’s Government is to clarify, codify and enhance existing legislation in England in order to bring it into line with developments both in England and Wales and internationally.

Your Committee is aware that the Law Officers have been monitoring the progress of the Home Office proposals and has been aware that the Law Officers would be recommending to the Committee the enactment in the Bailiwick of similar legislation to that soon to be in force in England. Indeed your Committee recognises the need to fight against corruption wherever it is found and as corruption knows no boundaries, the need to provide assistance to other jurisdictions to support their endeavours to combat corruption. The final paragraph in section 2.24 of this year’s Policy and Resource Planning Report stated (emphasis supplied).

“The States of Guernsey will preserve an appropriate balance between, on the one hand, recognition of the legitimate right to confidentiality whilst on the other, the need to assist foreign law enforcement agencies to effectively fight serious crime including tax evasion and corruption.”

Corruption Conventions

There are, as I have indicated, international conventions on the topic of corruption. Two of them are of special interest namely the 1999 Council of Europe Criminal Law Convention on Corruption and the 1997 OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions. There are also two European Union Instruments which cover much the same ground but they are not of direct relevance as they are not within the ambit of Protocol 3 which governs our relationship with the European Union.

I shall now briefly review the contents of the Council of Europe and OECD Conventions as I consider that these Conventions should, as soon as may be appropriate, be ratified by Her Majesty’s Government on behalf of the Bailiwick after the necessary Bailiwick legislation has been enacted.

(i) The 1999 Council of Europe Criminal Law Convention on Corruption

Once it is in force the most comprehensive and arguably important international convention on corruption will be the Council of Europe Criminal Law Convention on Corruption. This was signed by the United Kingdom in January 1999 but it has not yet ratified the Convention and it cannot seek ratification until new legislation has been enacted.

The Convention provides for the criminalisation of the following:–

- (i) the act of bribery of domestic public officials;*
- (ii) the passive bribery of domestic public officials;*
- (iii) bribery of members of domestic public assemblies;*

- (iv) *bribery of foreign public officials;*
- (v) *bribery of members of foreign public assemblies;*
- (vi) *active bribery in the private sector;*
- (vii) *passive bribery in the private sector;*
- (viii) *the bribery of officials of international organisations;*
- (ix) *the bribery of members of international parliamentary assemblies;*
- (x) *the bribery of judges and officials of international courts;*
- (xi) *“trading in influence”. This the Convention defines as “the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision making of a domestic public official, a member of a domestic public assembly, a foreign public official, a member of a foreign public assembly, an official of an international organisation, a member of an international parliamentary assembly or judges and officials of international courts.*

“Active bribery” is the giving of money or benefits. “Passive bribery” is their receipt.

The Convention requires that legislation be enacted to combat the laundering of the proceeds from corruption offences and for public institutions to be able to disclose to the law enforcement authorities any suspicion of corruption.

In addition the Convention requires that legislation should be brought in to force to ensure that the courts of a State which ratifies the Convention have jurisdiction over corruption offences which are committed either ‘in whole or in part’ within that territory. It will therefore be necessary to put beyond doubt the ability to prosecute offences that do not occur wholly within the Bailiwick. Proper arrangements for extradition are required and parties to the Convention must be prepared to exchange spontaneously any information they may receive about corruption offences which may be of interest to another jurisdiction.

(ii) *The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*

This convention was ratified by the United Kingdom in December 1998.

The substantive provisions of the OECD Convention require States to criminalise the direct or indirect intentional offering, promising or giving of any undue pecuniary or other advantage to a foreign public official to secure either the undertaking of an official act or a refraining from acting in order to obtain or retain business or gain other improper advantage in the conduct of international business. Related inchoate offences (such as attempt or aiding and abetting) must also be criminalised and corporate criminal or similar liability must be established. Extraterritorial jurisdiction should also be established.

Foreign public officials are those holding legislative, administrative or judicial office, or performing public functions and include officials or agents of public international organisations.

The offences created must be punishable by penalties which are capable of triggering the operation of extradition, mutual assistance in criminal matters, proceeds of crime and anti-money laundering statutes. Mutual assistance and extradition obligations are created by the Convention. I would recommend that penalties under Bailiwick Law should be identical to those which will be in force in England.

Ratification of the two Conventions

As intimated above, I would advocate that after Bailiwick legislation has been enacted, ratification and accession should be sought for the OECD Convention and also the Council of Europe Convention, once it has been ratified by the United Kingdom.

The international consequences of not legislating

The Conventions are evidence of the growing concern of the international community about the extent and impact of corruption. The Republic of Ireland has recently enacted amendment legislation to update its corruption legislation. The United Kingdom will soon do so. It is inevitable that jurisdictions such as Guernsey, Alderney and Sark which rightly assert that they are cooperative jurisdictions which play their part in the fight against all types of international crime will be expected to have in place legislation which meets the requirements of these two Conventions. If we do not enact corruption legislation, so as to enable us in due course to ratify the two Conventions, then I am certain that the Bailiwick's reputation as being co-operative in the fight against all types of crime will be tarnished.

Domestic considerations

As far as domestic considerations are concerned I believe that comprehensive legislation to deal with corruption should be introduced. Integrity, accountability and honesty are not optional extras; they should underpin the professional and public life in the Bailiwick. Although the Bailiwick has in the past been fortunate enough, so far as I am aware, to be corruption free it would be foolhardy to assume that persons may never be tempted to try to improve their business position, by the use of corrupt payments. The existence of comprehensive legislation covering all the requirements of the Council of Europe Convention with heavy penalties on conviction should, in my opinion, act as a very strong deterrent to those who might be minded to act in a corrupt manner. The common law offence of bribery should be replaced by a modern statute creating offences identical to those which will come into force in England.

The progress towards legislation in the United Kingdom

*The legislation currently in force in the United Kingdom is not adequate to enable it to ratify the Council of Europe Convention. There is, for example, a need to legislate to criminalise "trading in influence" and the need to cover cases where the benefit goes to a third party in corruption in the private sector. Her Majesty's Government has for some time expressed an intention to introduce into Parliament a Bill which will inter alia meet the obligations under the various conventions to which it is a signatory. It is understood that the Bill will be introduced early next year. The Bill will be based to a large extent on a draft Bill produced by the Law Commission for England and Wales following its Report on Corruption, *Legislating the Criminal Code: Corruption (No 248)* but modified to take account of current international obligations. However, the final form of the legislation is not yet certain.*

The maximum penalty for corruption offences in England is likely to be seven years imprisonment. I consider that in Guernsey the maximum sentence should be the same as in England.

I therefore recommend that legislation be enacted to clarify and expand Bailiwick Law and to enable the 1997 OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions and the 1999 Council of Europe Convention on Corruption to be ratified as soon as may be appropriate on behalf of the Bailiwick and that Bailiwick legislation should be substantially similar to the Corruption legislation to be enacted in England.

ANTI TERRORISM LEGISLATION

Existing legislation

In 1990 the States approved a proposal by the Advisory and Finance Committee following a recommendation by the then Procureur that local legislation be enacted based upon the Prevention of Terrorism (Temporary Provisions) Act 1989. The Prevention of Terrorism (Bailiwick of Guernsey) Law 1990 was enacted and brought into force on the 1st January 1991.

Development since 1991

The main aim of the 1989 Act and the Guernsey Law of 1990 was to combat the terrorist threat resulting from the troubles in Northern Ireland. Indeed, the list of proscribed organisations under the 1990 Law was restricted to the Irish Republican Army and the Irish National Liberation Army. To an extent over the past 10 years the immediate threat of terrorism from Irish sources has diminished. Unfortunately that from other sources has greatly increased. Also, in the United Kingdom the government concluded that certain parts of the 1989 Act, might have been in contravention of the principles enshrined in both the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

In December 1995 Lord Lloyd of Berwick was invited by Her Majesty's Government to carry out an enquiry into the anti terrorism legislation in the United Kingdom and to make recommendations. Following Lord Lloyd's investigation Her Majesty's Government published a consultation document entitled "Legislation against Terrorism". Following the period of consultation a Bill was introduced into Parliament which eventually became the Terrorism Act 2000. It came into force in the United Kingdom in February 2001. It replaced the 1989 Act.

There can be little doubt that the 2000 Act resulted in large part from the fact that many countries have experienced an increase in terrorist activities within their borders. Terrorism acts had shown that there had been a profound change in the nature of terrorism and the inadequacies of traditional forms of judicial and police cooperation in combating terrorism had been highlighted. There had been recognition that terrorism stems from the activities of networks (sometimes enjoying extensive logistical and financial support) operating at an international level, which are based in several countries.

The Terrorism Act 2000

The Act of 2000 is a comprehensive piece of legislation. It contains some notable innovations. The definition of terrorism contained within the old United Kingdom legislation simply stated that "Terrorism" means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section thereof in fear.

Section 1 of the Act of 2000 is more comprehensive and clearer. It states as follows:–

- (1) In this Act "terrorism" means the use or threat of action where–*
 - (a) the action falls within subsection (2),*
 - (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and*
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.*

- (2) *Action falls within this subsection if it –*
- (a) *involves serious violence against a person,*
 - (b) *involves serious damage to property,*
 - (c) *endangers a person’s life, other than that of the person committing the action,*
 - (d) *creates a serious risk to the health or safety of the public or a section of the public, or*
 - (e) *is designed seriously to interfere with or seriously to disrupt an electronic system.*
- (3) *The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.*
- (4) *In this section –*
- (a) *“action” includes action outside the United Kingdom,*
 - (b) *a reference to any person or to property is a reference to any person, or to property, wherever situated,*
 - (c) *a reference to the public includes a reference to the public of a country other than the United Kingdom, and*
 - (d) *“the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.*
- (5) *In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.”*

It is to be noted that:

- (i) *the provisions of the Act extend not only to terrorism connected with the affairs of Northern Ireland and to the international field, but also to terrorism by or on behalf of domestic groups in the United Kingdom;*
- (ii) *the concept of the proscription of organisations is retained. It is however extended to all kinds of terrorism, and is not limited to terrorism connected with the affairs of Northern Ireland;*
- (iii) *it is now possible for Police or Customs to seize cash being imported or exported from the United Kingdom which is thought to be connected with terrorism. Applications can then be made to a court for the forfeiture of the money with the authorities having to satisfy a court on the civil burden of proof. The provisions are very similar to those currently in force in the United Kingdom and Guernsey under the Drug Trafficking legislation;*
- (iv) *under the old Terrorism legislation in the United Kingdom and Guernsey’s current Law there is a power for a court to make a Production Order requiring disclosure by a financial institution of the details of transactions carried out on a particular account. The Act of 2000 gives wider powers. It permits a judge to issue an order to financial institutions to disclose the existence of any account held on behalf of persons suspected of being involved in terrorism. If the Police then wish to have disclosed to them details of any transactions on the account then a formal Production Order has to be obtained;*
- (v) *under the Act of 2000 no person may be detained on suspicion of terrorist offences for more than 48 hours without the consent of a Magistrate. The total period of detention may not exceed 7 days.*

The need for new local legislation

I believe that it is appropriate that the States should have in place in this field, legislation similar to that recently enacted in the United Kingdom and should therefore cause to be enacted, a Law based upon the Act of 2000. My reasons for this conclusion are as follows:–

- (1) it will give our local law enforcement officers more comprehensive power to use, if required, in order to play a full part in the fight against international terrorism and also in the event that an act of terrorism should be committed in the Bailiwick.*
- (2) the introduction of comprehensive anti terrorist legislation will enhance the reputation of Guernsey, Alderney and Sark as being jurisdictions which cooperate fully in the fight against international crime of all types.*
- (3) the responsibility of HM Procureur in our current legislation for authorising the detention of terrorist suspects for more than 48 hours without bringing a person detained before a court may not be compliant with the European Convention on Human Rights and the International Covenant on Civil and Political Rights.*

Furthermore, the enactment of similar legislation to that in force in England would allow Her Majesty's Government to ratify on behalf of the Bailiwick two United Nations Conventions – first for the Suppression of Terrorist Bombing of 1997 and secondly for the Suppression of Financing of Terrorism 1999. Although, I am not in favour of recommending the extension of all international conventions to the Bailiwick I am firmly of the view that those which relate to the fight against terrorism should be ratified on the Bailiwick's behalf as soon as possible.

Form of local legislation

The Act of 2000 does contain a large number of sections which only apply in Northern Ireland. In view of this, any legislation enacted locally will be much shorter than the Act of 2000. I envisage the legislation will follow the following format:–

Part I (“Introductory”) will introduce the legislation and set out the new definition of terrorism and repeal the Law of 1990.

Part II (“Proscribed organisations”) will cover the proscribing of organisations. I propose that the Advisory and Finance Committee should have power by Regulation to proscribe those listed by the Home Secretary.

Part III (“Terrorist property”) will set out offences relating to fund raising, and other kinds of financial support for terrorism; the Royal Court will have the power to order forfeiture of money or other property connected with terrorist offences. A schedule to the Law will provide for forfeiture procedures.

Part IV (“Terrorist investigations”) will give the Police powers to set up cordons, and Schedules to the Law will provide for powers of investigation, by searching premises and seeking details of the existence of bank accounts. The Bailiff will have the power to issue Production and Restraint Orders concerning terrorists' funds.

Part V (“Counter-terrorist powers”) will provide the Police with powers of arrest, detention, stop and search and the power to impose parking restrictions. Schedules will provide for examination powers at ports and borders and the treatment of suspects, and for judicial extension of the initial period of detention.

Parts VI and VII (“Miscellaneous” and “General”) will create offences relating to terrorist and para-military activity, including incitement of overseas terrorism. It will also include provisions on extra territorial jurisdiction and extradition. There will be offences covering the undermentioned actions:–

- (a) weapons training for terrorist purposes, and recruitment for such training (maximum penalty 10 years);*
- (b) directing a terrorist organisation (maximum penalty life);*
- (c) possessing articles for terrorist purposes (maximum penalty 10 years);*
- (d) possessing information for terrorist purposes (maximum penalty 10 years);*
- (e) fund raising, use of money and involvement in funding arrangements for terrorist purposes (maximum penalty 14 years);*
- (f) laundering of terrorist money or property (maximum penalty 14 years);*
- (g) failure to disclose belief or suspicion of terrorism (maximum penalty 5 years);*
- (h) failure to abide by orders relating to terrorist investigators (maximum penalty 2 years).*

The maximum penalties indicated above are the same as in the 2000 Act.

The way forward

Should the States consent to the introduction of up-to-date and more comprehensive anti terrorist legislation than there is currently in force in the Bailiwick I hope that it will be possible to rapidly finalise an appropriate Projet de Loi. In light of recent tragic events in the United States further legislation may be enacted at an early date in the United Kingdom. In that event I would imagine that your Committee would wish that it be replicated in the Bailiwick. Should this arise then I shall suggest that you place before the States a supplementary Policy Letter to reflect any legislative developments in the United Kingdom.

I have concluded that it would be wrong to delay making my recommendation to you at this stage because it is impossible to anticipate the content of any legislation or the commencement date.

Corruption and Terrorism – conclusion

In view of the foregoing I should therefore be most grateful if you would recommend to the States the adoption of–

- (1) comprehensive legislation with regard to corruption as outlined in this letter so as to enable Her Majesty’s Government on behalf of the Bailiwick to ratify or accede to:*
 - (i) the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and*
 - (ii) the 1999 Council of Europe Criminal Law Convention on Corruption.*

- (2) *legislation with regard to terrorism similar to the Terrorism Act 2000 (save where it applies exclusively to Northern Ireland) and so as to enable Her Majesty's Government on behalf of the Bailiwick to ratify (i) the United Nations Convention for the Suppression of Terrorist Bombing of 1997 and (ii) the United Nations Convention for the Suppression of Financing of Terrorism of 1999."*

The States Advisory and Finance Committee concurs fully with H.M. Procureur's advice and recommends the States to direct the preparation of legislation as set out above.

I should be grateful if you would lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully,

L. C. MORGAN,

President,
States Advisory and Finance Committee.

The States are asked to decide:—

XXI.— Whether after consideration of the Report dated the 27th September, 2001 of the States Advisory and Finance Committee, they are of opinion:—

1. (1) That comprehensive legislation shall be adopted with regard to corruption as outlined in that Report so as to enable Her Majesty's Government on behalf of the Bailiwick to ratify or accede to:
 - (a) the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and
 - (b) the 1999 Council of Europe Criminal Law Convention on Corruption.
- (2) That legislation shall be adopted with regard to terrorism similar to the Terrorism Act 2000 (save where it applies exclusively to Northern Ireland) and so as to enable Her Majesty's Government on behalf of the Bailiwick to ratify:
 - (a) the United Nations Convention for the Suppression of Terrorist Bombing of 1997; and
 - (b) the United National Convention for the Suppression of Financing Terrorism of 1999.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES ADVISORY AND FINANCE COMMITTEE

EXTENSION OF THE PROTECTION OF INVESTORS
(BAILIWICK OF GUERNSEY) LAW, 1987

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

27th September, 2001.

Dear Sir

EXTENSION OF THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 1987

The Guernsey Financial Services Commission has reported to the States Advisory and Finance Committee in the following terms:–

“Following the publication in November 1998 of the United Kingdom Home Office Review Report (“the Report”) of Financial Regulation in the Bailiwick of Guernsey, the Commission has carefully considered the Report’s suggestions in connection with insider trading.

The Report suggested that “In Guernsey, offences under the Law should preferably include, as in the UK, Jersey and the Isle of Man, creating false markets in securities.” Following communication with the consultant on investment matters appointed to advise Mr Andrew Edwards, the author of the Report, the Commission understands that the reference to “securities” in the Report was intended to encapsulate all controlled investments under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“the Protection of Investors Law”).

This suggestion was considered by the Commission in conjunction with the Edwards Review Working Group (Investment Business), a committee of finance sector representatives established by the Commission with the remit of scrutinising each of the Report’s observations with regard to investment business. The Working Group saw no objection to extending the law in the manner suggested by the Report. The Commission concurs with this view.

Furthermore, the Commission recommends that it should be an offence to distort a market or misuse relevant information that is not generally available to other market users. The Commission proposes that these amendments should follow recent developments in United Kingdom legislation in the Financial Services and Markets Act 2000. The effect of these recommendations is that there would be an offence of market abuse incorporated in the Protection of Investors Law.

The Commission proposes that market abuse should be behaviour (whether by one person alone or by two or more persons jointly or in concert):–

- (i) which occurs in relation to controlled investments traded on a market;*
- (ii) which satisfies any one or more of the conditions set out below; and*

- (iii) *which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.*

The proposed conditions mentioned at paragraph (ii) above are that:–

- (i) *the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;*
- (ii) *the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;*
- (iii) *a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.*

In addition, the Commission envisages that the Protection of Investors Law would allow it to issue a code, which the court may take into account, containing such provisions as the Commission considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse. The Commission would consult with the finance sector before issuing any code or change to it. In addition, the Commission suggests that the court should be able to take into account a relevant code issued in a foreign jurisdiction.

The Commission considers that the new offence should be included in the Protection of Investors Law rather than the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 (“the Insider Dealing Law”) for the following reasons:–

- (i) *controlled investments, as defined in the Schedule to the Protection of Investors Law, is a wider concept than that of securities, to which the insider dealing legislation is confined;*
- (ii) *the proposals are allied to existing offences under the Protection of Investors Law and will thus reflect the position in the United Kingdom by keeping these associated offences within the same piece of legislation;*
- (iii) *the Insider Dealing Law provides, inter alia, for the Law Officers to investigate potential offences of that law. The Guernsey Financial Services Commission has no statutory responsibilities under the Insider Dealing Law. Accordingly, the additional offence suggested in the Report which relates to controlled investments, a matter within the Commission’s remit, does not sit well in the Insider Dealing Law; and*
- (iv) *the opportunity can be taken to make related changes to the Protection of Investors Law. These changes are discussed below.*

In connection with paragraph (iv) above, the Commission also recommends that one of the existing offences in the Protection of Investors Law should be amended both to take account of the widening of the definition of controlled investments from collective investment schemes to other

investments in 1998 and also to reflect relevant provisions in the Financial Services and Markets Act 2000. In general terms, there is an offence under the Protection of Investors Law of dishonestly inducing a person to enter into or to offer to enter into a controlled investment agreement. The Commission's specific recommendation is that this should be extended so that it will be an offence where a person:—

- (i) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular; or*
- (ii) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or*
- (iii) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular;*

for the purpose of inducing, or is reckless as to whether it may induce, another person to enter, or offer to enter, into a controlled investment agreement. In addition, it is recommended that the proposed offences should apply to situations where a person refrains from entering into, or offering to enter into, a controlled investment agreement and, also, the exercising or refraining from exercising a right conferred by a controlled investment.

At the same time, it is desirable to include a provision within the Protection of Investors Law stating explicitly that the Commission's powers to require information extend to offences under the Law. The Commission currently has the power to require a licensee, an applicant for a licence, a person who appears to the Commission to be carrying on controlled investment business, or a relevant person to produce books, papers or other information or answer questions relating to a controlled investment or controlled investment business at such time or place as the Commission may specify or to a person appointed by the Commission. It is difficult to envisage a situation where the Commission would wish to obtain information when investigating an offence under the Protection of Investors Law which does not relate to controlled investments or controlled investment business. Nevertheless, a specific statement that the Commission's powers to obtain information apply to offences under the Protection of Investors Law would give these persons providing such information with additional comfort that they are not breaching any obligation of confidence and assist international bodies in their understanding of the Law.

Finally, in order to address the concerns of financial services businesses regulated under the Protection of Investors Law, it is desirable to include a specific statement in the Law, clarifying that information may be provided to the Commission without breaching any obligation of confidence or other restriction on the disclosure of information to which a person may be subject. Such a statement would merely confirm the existing position as the requirement to provide information to the Commission under the Protection of Investors overrides any obligation of confidence. However, as financial institutions would feel more confident with an explicit statement of protection against a breach of confidence, the Commission considers that such a statement should be included in the Protection of Investors Law.

The Protection of Investors Law extends throughout the Bailiwick. Accordingly, the Commission has consulted the Policy and Finance Committee in Alderney and the General Purposes and Advisory Committee in Sark. Both the Alderney and Sark authorities agree with the Commission's recommendations.”

The Advisory and Finance Committee concurs fully with the Commission's recommendations. It therefore recommends that legislation be enacted on the lines set out in this letter.

I would be grateful if you could place this letter before the States together with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully,

L. C. MORGAN,

President,
States Advisory and Finance Committee.

The States are asked to decide:—

XXII.— Whether after consideration of the Report dated the 27th September, 2001 of the States Advisory and Finance Committee, they are of opinion:—

1. That legislation shall be enacted along the lines set out in that Report concerning the extension of the Protection of Investors (Bailiwick of Guernsey) Law, 1987.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES BOARD OF ADMINISTRATION**ST. PETER PORT HARBOUR – REPAIRS TO NEW JETTY**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

9th August, 2001.

Dear Sir,

ST PETER PORT HARBOUR – REPAIRS TO NEW JETTY

The 'New' Jetty in St Peter Port Harbour was completed in 1929 and forms the safe point of entry for sea traffic of both passengers and 'Roll-on Roll-off' freight and is as such vital to the Island's economy. Originally built for traditional lift on and lift off cargo and the berthing of packet steamers the structure now provides the terminal area for two 'Roll-on Roll-off' berths and a pontoon berth.

The structure comprises a reinforced concrete deck supported on reinforced concrete piles restrained by walings and diagonal bracing of similar construction. There is an underdeck walkway which provides access at low water.

The Board of Administration commissioned a structural report on the strength of the jetty in 1968. The report produced by Consulting Engineers Rendel, Palmer and Tritton commented upon the deterioration of the structure and identified that the worst area was the section above the underdeck walkway.

The report on the jetty was part of a larger commission investigating the whole *modus operandi* of the port traffic. The outcome of the study was the need to strengthen the crane beams on both sides of the jetty thereby enabling restrictions on crane operations to be lifted in 1972.

The installation of the Island's first 'Roll-on Roll-off' ramp on the east side of the jetty was carried out in 1974 and from then on the conventional mail boats which for many years had carried cars and used shore cranes for unloading were quickly phased out and replaced by car ferries.

In 1985 the States agreed that a second 'Roll-on Roll-off' ramp should be installed on the western side of the jetty to ensure the Island against the effects which could result from damage occurring to the original ramp and to enable the Island to cope with the possible introduction of larger vessels in the future. Such vessels could severely damage the jetty structure which when constructed was never intended to accommodate such vessels. In order to protect the jetty and to reduce the loading to which it was continually subjected a fendering system totally independent of the structure was installed. The ramp and fendering system together with the now familiar Inter-Island quay was commissioned in 1987.

The original 'Roll-on Roll-off' ramp installed in 1974 served the Island well until 1998 when it was replaced. By that time it was apparent that the ramp with its slower turnaround and operating restrictions could not maintain the level of efficiency required. The ramp had been designed basically for cars and comprised a single lane thereby not allowing two vehicles to pass. The replacement ramp was 60 metres long and accommodated two lanes of traffic and again the berth was protected by an independent fendering system.

Loadings on the jetty have now been reduced to a minimum. Buildings have been added to the jetty throughout its life but on each occasion the loads from the buildings have been arranged such that the forces are taken directly into the piles supporting the jetty.

The 'New' Jetty is now over seventy years old and well beyond its original 'design' life. (The current British Standard Code of Practice for Maritime Structures suggests a minimum 'design life' for open jetties of 45 years). With the removal of all unnecessary loadings the Board now considers that the main structure needs attention. Repairs have been undertaken throughout its life. These generally have consisted of gunite repairs, epoxy mortar repairs and plain concrete repairs. The aggressive environment in the splash zone between the underdeck walkway and the top deck has given rise to cracking and subsequent corrosion of the reinforcement resulting in the delamination of the concrete cover. This was observed during the inspections which took place as part of the 1968 survey. The report prepared by Rendel Palmer and Tritton on the strength of the jetty concluded that the most likely cause of the cracking was from the berthing forces from vessels and that the deterioration was exacerbated by the shallow concrete cover to the reinforcement found in many locations.

The (then) Department of Engineering advised the Board that the preferred form of repair for the jetty would be a combination of cathodic protection (the electrical protection of underwater structures from corrosion) and traditional concrete repairs. Accordingly in 1997 the Board commissioned Corrosion Control Services Limited of Wolverhampton to undertake further investigations into the structural deterioration and to determine suitable means of protecting and extending the life of the jetty by means of a cathodic protection system. Trials were carried out between 1997 and 1999 and data collected indicated that cathodic protection was a suitable technique that could be adopted to prevent further corrosion damage to the Jetty.

In September 2000 the Board invited specialist Civil Engineering Consultants to tender for the provision of services for extending the life of the jetty for a further 25 years. Scott Wilson Kirkpatrick and Co Ltd were duly appointed and since that time have completed a detailed structural analysis of the jetty and prepared tender documents for the repair of the structure. The documents were issued to selected Contractors and the following tenders were received.

• Balvac Whitley Moran	£2,777,886.87
• Concrete Repairs Ltd	£2,977,140.18
• Geomarine/Brookes (Northern) JV	£3,473,269.11
• Freyssinet	£3,609,139.22
• Miller & Baird (CI) Ltd	£3,914,630.71
• P Trant (Guernsey) Ltd	£5,830,688.42

Alternative designs were submitted by Balvac Whitley Moran, Concrete Repairs Ltd and by Freyssinet. Freyssinet's alternatives were over £300,000 greater than the next lowest alternative and also nearly £600,000 greater than the lowest tender for the proposed design. It was therefore considered unnecessary to pursue these alternatives further.

Concrete Repairs Ltd's alternative suggested minor amendments to the proposed design and resulted in a reduction in their original tender of only £30,000 giving a revised submission of £2,946,917.

Balvac Whitley Moran offered several alternatives to the original design some of which were acceptable to Scott Wilson Kirkpatrick & Co Ltd and some which were not. However detailed post-tender discussions have resulted in a revised tender from the Contractor of **£2,554,973** ie over £390,000 lower than the next lowest offer.

It is difficult to assess the total amount of concrete repair work necessary for the contract – the structure has a surface area in excess of 9,500 sq metres and is supported by over 400 reinforced concrete columns – and it is therefore recommended that a sum of **£200,000** be added to the revised tender sum as a contingency item to cover for any additional works.

The anticipated completion time for the contract is two years. Because of the nature of the work particularly with regard to the cathodic protection element of the contract full time onsite supervision will be required. The Property Services Unit does not have suitably experienced staff available for the necessary supervision and therefore it is recommended that the supervision of the contract be carried out by the design Consultant Scott Wilson Kirkpatrick & Co Ltd. The Consultant has advised that a budget figure of **£527,500** be allowed for the necessary supervision.

The supervision falls into four stages namely:

- **Pre-Construction Period**

The Contractor has stated that they wish to spend the period before full commencement of construction on planning and trials. Subject to States approval of the contract at its meeting scheduled for 31 October 2001 the trials are intended to take place in the UK over a six week period in November and December followed by further work in Guernsey in January and February. The cost of the trials are included in the Contractor's tender however some input will be required from the Consultant.

The estimated cost of the supervision is: £27,300

- **Construction Period**

The Consultant has assumed that the contract warrants the full time employment of three members of staff for an average period of 16 months. The staff comprises an Engineer's Representative supported by an Assistant and an Inspector. As the Contractor will be working six days per week and will work all daylight tides which may involve double shifts during the summer months this level of supervision is considered necessary.

The supervision together with Head Office support is estimated to cost: £443,000

- **Commissioning Tests**

The work is to be divided into 16 discrete sections and on completion of each the cathodic protection system will have to be commissioned. An allowance has been made for a period of three days by the CP specialist for each commissioning.

The estimated cost for commissioning is: £31,600

- **Maintenance Period**

The Consultant has allowed for two visits during the 12 month maintenance period and for one at the end of the final inspection. As-built drawings and maintenance manuals would be finalised during this period together with the Final Account.

The estimated costs incurred during this period are: £25,600

The sum for supervision is the highest estimate and is dependent on the actual length of the contract. It is hoped that the work will be completed in a much shorter period than the expected two years. The Board will make every effort to ensure that the cost of supervision is kept as low as reasonably possible. However the Board must ensure that adequate provision is made at this stage to cover all necessary costs and for that reason an absolute maximum figure has been budgeted.

It should be noted that although the cost of supervision is estimated to be approximately £22,000 per month this is not unusual for maritime contracts. Cost of supervision for the Longue Hougue contract in 1990/91 was £20,000 per month and this sum excluded the services of the Principal Engineer (Harbours & Airports) who was seconded to the consultant (Coode Blizard Ltd) to undertake the role of Engineer's Representative on site.

The total cost of the contract is **£3,282,473.00** comprising:

	£
• Tender	2,554,973.00
• Contingency Item	200,000.00
• Supervision	527,500.00

(It is estimated to demolish and construct a replacement jetty will cost in excess of £20 million).

The Board recommends the States:

1. to approve the repairs to the 'New' Jetty in St Peter Port Harbour as outlined in this report at a cost not exceeding £3,282,473;
2. to authorise the Board of Administration to accept the tender from Balvac Whitley Moran in the sum of £2,554,973 to which sum should be added a contingency item of £200,000;
3. to authorise the Board of Administration to appoint Scott Wilson Kirkpatrick & Co Ltd, Consulting Engineers, to provide Engineering Supervision and Consulting Services for this project for a sum not exceeding £527,500;
4. to vote the Board of Administration a credit of £3,282,473 to cover the cost of the above project, which sum shall be charged as capital expenditure in the accounts of the Harbour of St Peter Port.

The Board should be grateful if you would be good enough to lay this matter before the States with appropriate propositions.

Yours faithfully

R. C. BERRY

President
States Board of Administration

[N.B. The States Advisory and Finance Committee supports the proposals.]

The States are asked to decide:—

XXIII.— Whether, after consideration of the Report dated the 9th August, 2001, of the States Board of Administration, they are of opinion:—

1. To approve the repairs to the New Jetty in St. Peter Port Harbour as outlined in that Report at a total cost not exceeding £3,282,473.00.
2. To authorise the States Board of Administration to accept the tender in the sum of £2,554,973.00 submitted by Balvac Whitley Moran, to which sum shall be added a contingency item of £200,000.00, for the carrying out of those repairs.
3. To authorise the States Board of Administration to appoint Scott Wilson Kirkpatrick & Co. Limited, Consulting Engineers, to provide Engineering Supervision and Consulting Services for that project for a sum not exceeding £527,500.00.
4. To vote the States Board of Administration a credit of £3,282,473.00 to cover the cost of the above project, which sum shall be charged as capital expenditure in the accounts of the Harbour of St. Peter Port.

STATES RECREATION COMMITTEE**THE REDEVELOPMENT OF BEAU SEJOUR CENTRE**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

19th September, 2001.

Dear Sir

The Redevelopment of Beau Sejour Centre

1. At their meeting of 28 March 2001 the States of Deliberation agreed to the following recommendations of the Recreation Committee:

- “– **To approve in principle the redevelopment of Beau Sejour Centre as described in this report and the attached plans at an estimated cost of £9,000,000 including professional fees.**
- **To direct the Committee to seek tenders for the redevelopment of Beau Sejour Centre as detailed above and to report back to the States with details of the tenders received.**
- **To vote the States Recreation Committee a credit of £800,000 to cover the cost of consultants’ fees for feasibility studies, planning and design work, which sum shall be taken from that Committee’s allocation for capital expenditure.**
- **To authorise the States Advisory and Finance Committee to transfer from the Capital Reserve to the capital allocation of the States Recreation Committee the sum of £800,000.”**

2. This policy letter sets out the information on that tender process.
3. Further to the formal States approval for the redevelopment works the design team have progressed with the detailed design development culminating with the main tender issue on 17 July 2001.
4. Prior to the issue of tenders an expression of interest advert was placed in Building Magazine and the Guernsey Press requesting “expressions of interest” from main contractors and mechanical and/or electrical contractors wishing to be considered for inclusion on the finalised tender list. A briefing pack was issued to all companies who expressed an interest in tendering for the project giving details of the nature, scope and timescale for the redevelopment works. The briefing pack required contractors to provide details of their proposed site team, CV’s, relevant experience etc to provide the Committee and its professional team with an objective basis for the selection of tenderers.
5. Based upon those returns the professional team invited an appropriate number of contractors to attend pre-qualification interviews.

Main Contractors

6. The following main contractor companies responded to the advert and were issued with the pre-qualification briefing pack:

Main Contractors	Based	Comments
R G Falla Ltd	Guernsey	Attended pre-qualification interview. Placed on final tender list.
JW Rihoy and Son Ltd	Guernsey	Attended pre-qualification interview. Placed on final tender list.
Dew Construction Ltd	UK	Attended pre-qualification interview. Placed on final tender list.
W A Mosgrove Ltd	Guernsey	Briefing pack issued – withdrew.
Dean & Bowes Ltd	UK	Briefing pack issued – withdrew
Stoppes Ltd	UK	Briefing pack issued – withdrew
P Trant Ltd	UK	Briefing pack issued – withdrew
Final tender list 3 main contractors.		

7. The final tender list therefore comprised the following 3 main contractors:

RG Falla Ltd

JW Rihoy and Son Ltd

Dew Construction Ltd

Mechanical and Electrical Subcontractors

8. With regard to the appointment of mechanical and electrical contractors to the project the professional team looked to ensure that the most effective route was followed given the scale and complexity of the proposed redevelopment. It was agreed that the mechanical and electrical subcontractors should be domestic to the main contractor. From the pre-qualification interviews a selected list of “approved” subcontractors who could be contracted in this way by the main contractor was provided to each of the main contractors tendering.

The following mechanical and electrical contractors responded to the advert and were issued with the pre-qualification briefing pack:

Mechanical (M) & Electrical (E) Contractors	Category	Based	Comments
Amalgamated Engineers Ltd	M&E	Guernsey	Attended pre-qualification interview – withdrew
Lorne Stewart PLC	M&E	UK	Attended pre-qualification interview – placed on approved list
Kestral Technical Services Ltd	M&E	UK	Not invited to interview.
Electrical Installations (Guernsey) Ltd	E	Guernsey	Briefing pack issued – no response received
Longcross Engineering Ltd	M&E	UK	Attended pre-qualification interview – placed on approved list
Dudley Bower Services Ltd	M&E	UK	Attended pre-qualification interview – placed on approved list
Smart Manufacturing Ltd	M	UK	Not invited to interview.
FW Rihoy & Son Ltd	E	Guernsey	Attended pre-qualification interview – placed on approved list
P Trant Ltd	M&E	UK	Briefing pack issued – withdrew.
Air Cool Engineering Ltd	M	UK	Attended pre-qualification interview – placed on approved list
Guernsey Air Conditioning Ltd	M	Guernsey	Attended pre-qualification interview – placed on approved list. Subsequently withdrew.
Meggitt Marsh Ltd	E	UK	Attended pre-qualification interview – placed on approved list
Mitie Engineering Services Ltd	M&E		Reserve Contractor. Placed on approved list following withdrawal of Guernsey Air Conditioning

9. This process produced a final approved mechanical and electrical tender list as follows:

Mechanical	Electrical
Lorne Stewart PLC	Lorne Stewart PLC
Longcross Engineering Ltd	Longcross Engineering Ltd
Dudley Bower Services Ltd	Dudley Bower Services Ltd
Air Cool Engineering Ltd	FW Rihoy & Son Ltd
Mitie Engineering	Meggitt Marsh Ltd

10. These approved subcontractors were named to the main contractors tendering who all agreed that the lists of names supplied were acceptable to them as domestic subcontractors.

The main contract tenders were issued on 17 July 2001 and returned on 24 August 2001.

Project budget

11. The States have approved an overall budget of £9 million for the project including professional fees of £1.25 million. This provides a construction budget of £7.75 million.
12. The scheme as designed has been accurately costed at a number of stages during the detailed design stage. It was clear during this process that the cost of the preferred scheme was rising to a level above this target figure. The last cost check by the project Quantity Surveyor, WT Partnership, prior to the tender issue stage predicted an expected cost of £8.4 million. Accordingly a number of options were included in the tender process in order that an informed assessment could be made of items of work that could be reduced or excluded in order to meet the given budget.

The tender returns are shown below:

Main Contractor	Tender price (£)
RG Falla	9,099,530.47
JW Rihoy & Son	8,529,303.00
Dew Construction Ltd	8,508,768.00

13. It can be seen from the above that Dew Construction were the lowest tenderer. (A brief resume of the company is attached at Appendix 1.)
14. All tenderers were informed that the tender process would follow the National Joint Consultative Committee for Building (NJCC) Code of Procedure for Single Stage Selective Tendering which is accepted as standard for the industry.
15. This states:

7.2 Should the tender under consideration exceed the employer's budget the recommended procedure is for a reduced price to be negotiated with the (lowest) tenderer, based on agreed changes to the specification or the quantity of work. The basis of negotiations and any agreements made should be fully documented.

7.3 Only when these negotiations fail should negotiations proceed with the next lowest tenderer. If these negotiations also fail, similar action may be taken with the third lowest tenderer.

As the tender under consideration exceeds the construction budget negotiation with Dew Construction Ltd has therefore taken place and a reduced specification and price agreed.

16. The revised tender negotiated is £7,749,562

Dew Construction Ltd has informed the Committee that its domestic subcontractors for the project will be:

Mechanical Longcross Engineering Ltd

Electrical F.W. Rihoy and Son Ltd

Both these companies were the lowest tenderers for the project works.

17. The task of reducing the cost of construction in order to achieve the Committee's budget for the project has been a difficult one with a number of important decisions needing to be made by the Committee with regard to what could be accommodated within that budget.
18. It is considered that the final specification agreed does not compromise the overall integrity of the scheme. A process of value engineering has been carried out by the project team and its outcomes agreed with the proposed main contractor. A substantial number of options have been reviewed and revisions made in order to meet the given budget.
19. A summary of the cost reductions achieved are detailed in Appendix 2 .
20. Gardiner and Theobald, the Project Manager has also provided a critique from the various team members on the effects of the best value exercise on the scheme, its objectives, the impact of the changes upon it etc. This is detailed at Appendix 3.
21. The Recreation Committee has been very determined that this project will be delivered on time and on budget, has worked hard to finalise a scheme that meets these criteria and are happy that it fulfils their original objectives.

Professional Team and Fees

22. As notified to the States a professional team was appointed to the project and approval given to develop the project to tender stage with an agreed budget for professional fees of £1,250,000. The sum of £800,000 was approved as payments to tender stage.

The professional team comprise:

Project Management Gardiner & Theobald

Architect ORMS Architecture Design

Quantity Surveyor WT Partnership – Guernsey

Structural Engineer Oscar Faber Ltd

Services Engineer Furness Green Ltd

Operations & Business Development Consultant DC Leisure Management

It is recommended that this project team be retained to completion of the project.

Recommendations

The States Recreation Committee therefore recommends the States:

- a. To approve the redevelopment of Beau Sejour Centre as set out in this report at a total cost not exceeding £9,000,000.
- b. To authorise the States Recreation Committee to accept the revised tender submitted by Dew Construction Ltd for a sum not exceeding £7,750,000 to carry out the works.
- c. To authorise the States Recreation Committee to appoint the professional consultants as described in this report to supervise the post contract works at a total cost not exceeding £450,000.
- d. To vote the Recreation Committee a credit of £8,200,000 to cover the outstanding cost of the above, which sum shall be taken from that Committee's allocation for capital expenditure.
- e. To authorise the States Advisory and Finance Committee to transfer from the Capital Reserve to the capital allocation of the States Recreation Committee the sum of £8,200,000.

I request that you will be good enough to lay this report before the States together with appropriate propositions.

Yours faithfully,

P. SIRETT,

Vice-President,
States Recreation Committee.

Dew Construction Ltd

Brief Introduction

Dew Construction Ltd was originally formed as George Dew Ltd. in 1934.

The Company is now part of the Dew Pitchmastic group of companies who have an approximate turnover of £130m per annum, (£100m by Dew Construction Ltd) throughout the UK.

Dew Construction Ltd operate out of 5 Regional Offices

- Oldham – Head Office – centralised services – Estimating / Buying / Safety / Quality / Planning / Accounts and Human Relations.
- Edinburgh
- Maidenhead
- Bristol
- Siddcup

Specialist Businesses

- Building
- Civil Engineering
- Sheet Piling
- Fabrication
- Pinelog Timber Structures
- Roofing Installations

Dew Construction in Guernsey

An alliance with a local building contractor was first formed to carry out a project for a long-standing client of Dew Construction, SSL International, formerly Seton Healthcare, Oldham.

The Project was the remodel and refurbishment of a pharmaceuticals facility at the Bridge (St. Sampsons) for a local organisation Simco.

E. Littlewood & Co. Ltd. and Dew joined to use the local skills and knowledge of Littlewood with the back up of a medium sized organisation with established working procedures and management expertise from Dew Construction Ltd. This working relationship has been taken forward for the Beau Sejour project.

Dew Construction on the UK Mainland

Clients

Dew Construction's turnover is predominantly generated by repeat business with a limited number of companies including the following:–

- Astra Zeneca
- British Aerospace
- Total Fitness

The Company is developing stronger links with its clients and working in collaboration to bring in innovation, continuous improvement and non-adversarial culture.

Building Side

The Company has considerable experience in working in live environments.

- Aerospace
- Astra Zeneca
- Industrialists

Of particular relevance to the Beau Sejour Project, Dew Construction has recently completed for Total Fitness a £6 million leisure project in the North of England. The facilities provided are:–

- 5 pools including a 25m, 9 lane pool and therapeutic pools.
- 200m, 4 lane elevated running track.
- Squash courts.
- Equipment and weights studio.
- Aerobics studios.
- Consulting suites.
- Changing facilities.
- Light refreshment restaurant.

Summary of Cost Reductions

The savings achieved have been summarised under six broad headings, with the level of saving achieved by each approach noted. Each Category of cost saving is discussed in more detail later in this report:–

Dew Construction Ltd Tender B	£8,508,768
Post Tender Savings	
1) Category A – Amendments to the Enabling Works associated with the revised programme and sequence for the redevelopment works agreed with Dew Construction Ltd	£72,029
2) Category B – Amendments to the Bills of Quantities measured items and provisional sums.	£138,429
3) Category C – Amendments associated with the resolution of Building Control and IDC approvals	£122,653
4) Category D – Rationalisation of the scheme back to the “core” scope of redevelopment works as defined in the original client brief	£172,856
5) Category E – Post tender value engineering achieved with Dew Construction Ltd	£186,420
6) Category F – Specification amendments to the submitted tender to achieve savings.	£66,819
Proposed Dew Construction Ltd Contract Sum	£7,749,562

The total saving achieved under the six categories noted above totals £759,206.

Category A – Amendments to the Enabling Works associated with the revised programme and sequence for the redevelopment works agreed with Dew Construction Ltd

The Enabling Works is a necessary component of the redevelopment works as it facilitates the main construction works to progress unhindered, whilst maintaining the Centres operations.

The Enabling Works at tender stage included the provision of newly constructed temporary cafe/bar facilities, temporary health suite portacabin type temporary accommodation for Beau Sejour staff and certain other ancillary works, most notably service diversions for security and fire alarms. As a result of the revised programme/sequencing strategy agreed with Dew Construction a significant sum of money can be saved by providing the temporary facilities in another form or location. For example approximately £15,000 had been allowed by the contractor for a new

temporary cafe/bar and reception in the lower concourse. However by utilising the existing Green Room as a cafe/bar location and the bar in the lower concourse as the reception this sum can be omitted. This pragmatic approach has achieved a significant saving to the project representing a best value solution for the Client. The Beau Sejour Centre management have also been able to define their requirements for temporary staff facilities and other ancillary works allowing further cost reductions.

Category B – Amendments to the Bills of Quantities measured items and provisional sums

During the post tender period the Project Team have been able to review the priced Bills of Quantities submitted by Dew Construction Ltd. The Project Team has been able to omit some items that were duplicated with provisional sums now that the scope of work has been finalised. An example of the type of reduction achieved under this category is a reduction in the cost of dealing with redundant drainage runs. It is proposed to fill the redundant drain runs with “grout” in lieu of breaking them out and backfilling the trench.

The provisional sums included in the tender have been reviewed in detail, and either reduced or omitted where the item covered by the provisional sum has now been designed out at a reduced or zero cost, or omitted as there is no longer a requirement for the item.

Category C – Amendments associated with the resolution of Building Control and IDC approvals

The scheme as tendered has now been developed to incorporate the final requirements of Building Control and the IDC. Whilst some additional costs have been absorbed as a result of extending the pedestrian ramp adjacent to the Theatre to meet the gradient requirements stipulated by Building Control, significant savings have accrued resulting from the agreement of alternative means of escape from level 3. The IDC required the proposed new solid roof section to the pool to be substituted with glazing. After significant analysis it is proposed to retain and refurbish the existing sloping glazing which is still competent. The vertical glazing to the pool area will be totally replaced as it has failed and no longer provides the thermal performance required for the internal environment to the pool.

Category D – Rationalisation of the scheme back to the “core” scope of redevelopment works as defined in the original Client Brief

A number of “options” were included in the tender document over and above the “core” elements of the redevelopment works. Essentially these represented enhancements to the scheme, that given favourable tender returns could have been included, in whole or in part. By tendering these options the Client was provided with an actual cost for executing the works, enabling informed judgement to be made whether they should be included in the contract or not. An example of the reductions made under this category is the refurbishment of the lower concourse toilets. These toilets are perfectly functional, and indeed were outside of the Clients original brief. However the Project Team obtained a tender price for executing these works if funding allowed. As it has transpired, the tender returns necessitated the removal of these options.

Category E – Post tender value engineering achieved with Dew Construction Ltd

Under this category considerable savings have been achieved in conjunction with Dew Construction Ltd. It is only really at the post tender stage, working with the Contractor that these savings can be realised as specific information relating to supplier/manufacturer or subcontractor

specification and costs is available. Savings achieved under this category relate to alternative ironmongery fittings, changing cubicles and floor finishes. ORMS have reviewed all of the alternatives and confirm that they are equivalent to that originally specified. In a similar vein certain elements of the scheme have been amended with the benefit of the Contractor's experience. The plant deck at roof level has been reduced in area whilst the quantity of equipment has remained unaltered.

The Project team have also been able to obtain updated quotations, for example for lockers from the originally specified supplier that Dew Construction Ltd have taken onboard and included in their revised contract sum.

It is by using a team approach, with the Project Team and the Contractor working together that the value engineered savings have been maximised.

Category F – Specification amendments to the submitted tender to achieve savings

The final category of savings are amendments to certain specifications for the works to reduce costs. Examples include the provision of tarmacadam in lieu of bound gravel to the external areas adjacent to the front entrance, ceramic tiling omitted in lieu of carpet to the new lower atrium area, and the omission of acoustic partitions to the function rooms and dance studio.

It should be noted that if further savings are driven out of the scheme as discussed in the conclusion to this report this may enable the inclusion of these items in the final scheme.

Conclusion

We wish to highlight that the savings identified in this report are a refinement of a greater level of potential savings identified by the Project Team and Dew Construction Ltd. The remaining potential savings were not acceptable as they compromised the quality or functionality of the Centre. An example of this was a possible saving for an alternative replacement floor to the Sir John Loveridge Hall. The proposed alternative would have been totally acceptable for a normal sports hall. However given the multi-use aspect of the Sir John Loveridge Hall for not only sport, but also car shows, conferences and performances the originally specified "semi-sprung" floor had to be retained as it is designed to perform as both a sports floor and also has the ability to sustain a greater level of loading from other activities.

The Project Team will continue to work with Dew Construction Ltd to identify further potential savings to the scheme, over and above those mentioned in this report, to the benefit of the project, without compromising the quality of the redevelopment works.

The underlying principle of all the savings achieved is that they do not compromise the quality or the scope of the redevelopment works identified in the Clients original Brief. All the elements of the redevelopment works are encompassed by Dew Constructions proposed tender sum of £7,749,562 and is therefore recommended for approval by the States of Guernsey.

Redevelopment of Beau Sejour Centre, St Peter Port, Guernsey**Executive Report by Gardiner & Theobald, ORMS and WT Partnership on Dew Construction Ltd Main Contract Tender B**

Further to the updated main contract tender returns on the 5th September 2001, and the determination that Dew Construction Ltd had submitted the lowest Tender, the Project Team met with Dew Construction Ltd on 6 September 2001 to progress negotiations to reduce the submitted tender cost of £8,508,768 to a sum less than £7,750,000, the Client's construction cost budget.

The minimum saving to be achieved therefore totalled £758,768.

WT Partnership's Pre Tender Estimate of the construction cost was £8,400,000.00 and hence the level of tender returns was entirely anticipated by the Project Team. Indeed in advance of the tender returns the Project Team identified a strategy for reducing costs, in conjunction with the lowest tenderer to meet the construction cost budget.

Further to a series of intensive meetings, and considerable input from both the Project Team and Dew Construction Ltd a revised contract sum has been agreed totalling £7,749,562.

This has been achieved by applying a range of techniques/approaches to achieve the necessary reduction in cost, for example value engineering. This is in direct comparison to the "blunt instrument" of simple cost cutting, or the omission of elements of the scheme which would be unacceptable to the Client.

Despite the reduction in cost the original contingency sum of £350,000 has been maintained within the proposed contract sum.

It is also worth noting that the Project team has agreed with Dew Construction a revised programme and sequence for the work that brings the overall completion date of the project forward by some eight weeks to early April 2003. This provides not only a financial benefit to the Beau Sejour Centre to have the redeveloped centre completed sooner, but also a programme buffer between project completion date and the Island Games in late June 2003.

This programme benefit has been achieved without compromising the stipulated health and safety requirements, means of escape and disabled access requirements contained in the tender documents.

We are pleased to be able to report that these strategies have been successfully applied without compromising the integrity, quality and scope of the project thereby satisfying fully the States of Guernsey Recreation Committee's original Brief for the redevelopment of Beau Sejour Centre.

Gardiner and Theobald – Project Manager
ORMS Architectural Design – Architect
WT Partnership – Quantity Surveyor

September 2001

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

1st October, 2001.

Dear Sir

I refer to the letter dated 20 September 2001 addressed to you by the President of the Recreation Committee on the subject of the redevelopment of Beau Sejour Leisure Centre.

The Advisory and Finance Committee supports the Recreation Committee's proposals as stated in its letter dated 22 February 2001 attached to the Recreation Committee's earlier policy letter. In supporting the proposals the Committee recognised "the valuable community services provided by the Centre" and considered the Recreation Committee's proposals to represent the best way forward in that they "extend the life of the Centre". Accordingly, the Committee does not expect any further requests from the Recreation Committee for significant expenditure on the Centre in the short or medium term.

The Committee welcomes the Recreation Committee's success in working within budget and its continual review of individual elements of the works throughout the tender process with the aim of ensuring that best value is achieved within the constraints of the approved budget. In particular the team approach of working with its advisors and the proposed contractor to examine all aspects of the scheme has added value to the proposals and is to be welcomed.

The Advisory and Finance Committee considers the proposed works to represent best value for the taxpayer and the best way in which the States can ensure that the Centre will function efficiently and meet the needs of the Island for the foreseeable future. The Advisory and Finance Committee recommends the States to approve the proposals.

Yours faithfully,

L. C. MORGAN,

President,
States Advisory and Finance Committee.

The States are asked to decide:—

XXIV.—Whether, after consideration of the Report dated the 19th September, 2001 of the States Recreation Committee, they are of opinion:—

1. To approve the redevelopment of Beau Sejour Centre as set out in that Report at a total cost not exceeding £9,000,000.
2. To authorise the States Recreation Committee to accept the revised tender in the sum of £7,750,000, submitted by Dew Construction Limited for the carrying out of the above works.
3. To authorise the States Recreation Committee to appoint the professional consultants as described in that Report to supervise the post contract works at a total cost not exceeding £450,000.
4. To vote the States Recreation Committee a credit of £8,200,000 to cover the outstanding cost of the above, which sum shall be taken from that Committee's allocation for capital expenditure.
5. To authorise the States Recreation Committee to transfer from the Capital Reserve to the capital allocation of the States Recreation Committee the sum of £8,200,000.

REQUÊTE**SUNDAY TRADING****TO THE PRESIDENT AND MEMBERS OF THE STATES OF DELIBERATION**

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH:-

1. THAT in the opinion of your Petitioners the States' Resolution dated 11th November 1999 (on article VII of Billet d'État XVIII of 1999) concerning Sunday trading and the existing legislation concerning Sunday trading (the Sunday Trading (Guernsey) Law, 1973 and the Sunday Trading (Implementation) Ordinance, 1974) are illogical and unworkable.
2. THAT in the opinion of you Petitioners the important issue concerning Sunday trading is that of choice –
 - (a) choice of shoppers to use the facilities if they wish;
 - (b) choice of the establishment to open if they wish; and
 - (c) choice of the staff to work on that day or not.
3. THAT in the opinion of your Petitioners all appropriate consultation has now been made and there is no longer any impediment to a decision being made to repeal the existing legislation concerning Sunday Trading.
4. THAT in the opinion of your Petitioners the Requête on Sunday trading which was debated in 12th October 2000 resulted in the States failing to make a decision, due to a 25 – 25 voting draw, and this did not reflect the views of the whole house or the majority of the populace of the Bailiwick.

THESE PREMISES CONSIDERED

YOUR PETITIONERS humbly pray that the States may be pleased to resolve as follows:-

That the Sunday Trading (Guernsey) Law, 1973 and the Sunday Trading (Implementation) Ordinance, 1974 be repealed and the States' Resolution dated 11th November 1999 (on article VII of Billet d'État XVIII of 1999) concerning Sunday trading be rescinded so that the legal restrictions in respect of Sunday trading are removed.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY, this 8th day of August, 2001

BRIAN RUSSELL
A. D. C. WEBBER
J. BEAUGEARD
D. JONES
K. PREVEL

R. MATTHEWS
L. GALLIENNE
LYNDON TROTT
JOHN GOLLOP
MARY LOWE

PAT MELLOR
BERNARD FLOUQUET
P. SIRETT

MICHAEL BURBRIDGE
P. A. C. FALLA
BRIAN SHERIFF

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

30th August, 2001.

Dear Sir,

I refer to the Requête submitted by Deputy B. Russell and fifteen other members of the States concerning Sunday Trading.

The Advisory and Finance Committee has sought comments from the Board of Industry on this matter. The President of that Board is of the opinion that the Board's view will not have changed substantially since the Requête placed in 2000. A copy of his letter is appended.

The Committee also considers the matter of Sunday Trading to be a matter for States members to vote on according to their personal views.

The Committee fully supports the request of the Board of Industry that if this Requête is successful, the repeal of the relevant legislation should not take place until the protections that will be available to shop workers under the Shop Workers Protection legislation are enacted.

Yours faithfully,

R. C. BERRY,

Member,
States Advisory and Finance Committee.

The President,
Advisory & Finance Committee,
Sir Charles Frossard House,
La Charroterie,
St. Peter Port,
Guernsey, GY1 1FH.

15th August, 2001.

Dear Deputy Morgan,

SUNDAY TRADING REQUÊTE

I refer to your letter dated 14th August 2001 requesting any comments the Board of Industry may wish to make in relation to the Requête proposed by Deputy Brian Russell, seeking to remove any restrictions on Sunday Trading.

Whilst the Board has not had the opportunity to discuss this latest Requête in detail, I am of the opinion that the Board's views will not have changed substantially from those expressed in my letter to you on this subject some twelve months ago, which, for ease of reference, I have re-stated the sentiments of in this letter.

As you are aware, the Board has expended considerable time, effort and energy over the last five years in responding to various States instructions to address the issue of Sunday Trading in a variety of ways. The de-regulation of Sunday Trading was championed by my predecessor and approved by a majority of the Board but rejected by the States.

The Board went on to propose amendments to the legislation, including a set of guidelines defining Sunday Trading, and this, with amendments, was accepted by a majority of the States. As a consequence of that decision the Law Officers have been commissioned to amend existing legislation for presentation to the States at some point in future.

Against this background the Board has previously stated that it does not believe that it should formally endorse the Requête – something that it was invited to do by the petitioners of the Requête lodged in August 2000. What it did agree to do, however, at that time was as follows:

1. Board members should be free to vote as their conscience sees fit on this issue.
2. Board members should feel free to make their views known publicly as individuals.
3. The Board would steadfastly resist any attempts to require it to prepare any further detailed report in this long running issue because this could only be achieved at the expense of what the Board regards as more important work affecting the economy of the Island in the long term.

Whilst this matter has not been formally discussed at a recent Board Meeting you will note that three of the Boards members have signed the Requête and as you are aware I have previously made it quite clear that I would welcome deregulation of Sunday Trading.

If the Requête is successful I would request that the repeal of the legislation should not take place until the protection that will be available to shop workers under the Shop Worker Protection legislation are enacted, which should be either later this year or early in 2002.

I trust that I have made the Board's position clear on this matter.

Yours sincerely,

JOHN ROPER,

President,
States Board of Industry.

The States are asked to decide:—

XXV.—Whether, after consideration of the Requête dated the 8th August, 2001, signed by Deputy B. Russell and fifteen other Members of the States, they are of opinion:—

1. That the Sunday Trading (Guernsey) Law, 1973, and the Sunday Trading (Implementation) Ordinance, 1974, shall be repealed and the States Resolution dated 11th November (on Article VII of Billet d'État No. XVIII of 1999) concerning Sunday trading shall be rescinded so that the legal restrictions in respect of Sunday trading are removed.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES**THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS (STANDARDS OF TREATMENT, OPERATORS AND PREMISES) REGULATIONS, 2001****THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS (PRESCRIBED FEES) REGULATIONS, 2001**

In pursuance of the provisions of section 19(2) of the Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000, I lay before you herewith the following Regulations made by the States Board of Health on the 28th August, 2001:–

THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS (STANDARDS OF TREATMENT, OPERATORS AND PREMISES) REGULATIONS, 2001**EXPLANATORY NOTE**

These Regulations impose duties to ensure adequate hygiene standards on proprietors, operators and premises for the purpose of carrying out the operations of acupuncture, tattooing, electrolysis, ear piercing or other forms of body piercing.

THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS (PRESCRIBED FEES) REGULATIONS, 2001**EXPLANATORY NOTE**

These Regulations set the fees payable at the time of the submission of an application for registration of premises for carrying on the operations of acupuncture, tattooing, electrolysis, ear piercing or other forms of body piercing and in respect of annual inspection of premises.

THE AIR TRANSPORT LICENSING (EXEMPTION OF AIR TAXI SERVICES) REGULATIONS, 2001

In pursuance of the provisions of section 24(3) of the Air Transport Licensing (Guernsey) Law, 1995, I lay before you herewith the Air Transport Licensing (Exemption of Air Taxi Services) Regulations, 2001, made by the States Transport Board on the 31st August, 2001.

EXPLANATORY NOTE

These regulations exempt from the licensing requirements of the Air Transport Licensing (Guernsey) Law, 1995, all air taxi services operating between Guernsey and any of the other British Islands. Other legal requirements (eg, to hold a CAA licence) are not affected.

DE V. G. CAREY
Bailiff and President of the States

The Royal Court House,
Guernsey.
The 12th October, 2001.

APPENDIX

STATES ADVISORY AND FINANCE COMMITTEE

REVENUE EXPENDITURE, CAPITAL PROJECTS AND ASSET PURCHASE FUND

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

27th September, 2001.

Dear Sir,

REVENUE EXPENDITURE, CAPITAL PROJECTS AND ASSET PURCHASE FUND

The financial procedures approved by the States (Billets d'État VIII of 1991, XXIV of 1993, XV of 1995 and XIV of 1998) require the Advisory and Finance Committee to report in the Policy and Resource Planning Report on the use of the delegated powers conferred on it to approve:

- (a) Increases in General Revenue operating costs;
- (b) Use of the Asset Purchase Fund;
- (c) Capital projects (straightforward replacements and projects under £100,000), and
- (d) On the need for additional funding under budget headings categorised as formula led.

No further increases in operating costs have been approved since the last report to the States on the matter (Appendix IX to Billet d'État XV, July 2001).

No further items have been approved for acquisition using the Asset Purchase Fund since the previous report to the States on this matter (Appendix IX to Billet d'État XV, July 2001).

The following capital projects have been approved by the Committee since those reported in Billet d'État XV, July 2001.

	£
<u>Advisory and Finance Committee</u>	
Sir Charles Frossard House – Conference Facility	13,000
<u>States of Alderney</u>	
Alderney Snooker Club – Loan	30,000
Harbour – Outboard motor – Replacement	3,533
La Banquage – Site works – Phase II	11,160
New Vicarage – Consultants Fees	7,000
<u>Agriculture and Countryside Board</u>	
Tractor – Replacement	5,500

	£
<u>Board of Administration</u>	
Alderney Airport	
Fire Appliances – Replacement	263,314
Customs and Immigration	
New Jetty Office Accommodation – Alterations	28,105
Computerised Suspect Index – Upgrade	21,550
St Peter Port Car Parking – Feasibility Studies	16,500
<u>Board of Health</u>	
Equipment – Additional	
Laparoscopic and Vascular Surgery Equipment	21,900
Equipment – Replacement	
Castel and King Edward VII Hospitals – Beds/Mattresses	133,715
Fleet Car Replacement Programme	116,522
ICU Ventilator	31,314
States Analysts Laboratory – Heating/Ventilation Unit – Replacement	10,323
Surgical Laser	47,167
Uninterruptable Power Supply	68,545
La Corbinerie – Creation of Public Footpath – Additional	2,000
<u>Education Council</u>	
Asbestos Removal – College of Further Education and Other Minor Works	19,382
College of Further Education – Temporary Accommodation	99,639
ICT Strategy – Phases II and III	
Major Electrical Upgrades and Data Cabling – Phase I	852,032
Network Communications Equipment and Server Upgrade	15,000
Strategic Project Management	242,000
(On 26 July 2000 (Billet d'État XVIII) the States authorised the Advisory and Finance Committee to approve capital votes in respect of the Council's ICT Strategy Phases II and III)	
St Anne's School – Boiler Replacements	42,248
School Workshops – Health and Safety Review – Phase II	26,650
<u>Committee for Home Affairs</u>	
Fire Brigade	
Management Information System	74,800
Wireless Staff Car – Replacement	8,806
Prison	
Education and Interview Centre	94,533
Kitchen – Refurbishment	10,000
Record Storage and Retrieval System	10,000
Vehicle – Replacement	9,500
<u>Heritage Committee</u>	
Castle Cornet – Main Electricity Cable – Replacement	45,000
Guernsey Museum and Art Gallery – Computer Link to Sites	63,655
<u>Island Development Committee</u>	
Computer Replacements	19,979

	£
<u>Recreation Committee</u>	
Beau Sejour Playground – Resurfacing	7,400
Osmond Prialx Memorial Playing Field	
Athletic Facilities Upgrade	108,500
Infield Upgrade	99,859
(On 25 July 2001 (Billet d'État XVII) the States authorised the Advisory and Finance Committee to approve capital votes in respect of the ground works at Osmond Prialx Memorial Playing Field)	
<u>States Traffic Committee</u>	
Office Accommodation – Refurbishment	31,891
<u>Board of Administration – Ports</u>	
Airport	
Thermal Imaging Camera	6,450
Fire Appliances – Replacement	175,776
Instrument Landing System Upgrade – Consultants Fees	16,470
Tractor – Replacement	13,866

I should be grateful if you would arrange for the publication of this letter as an Appendix to the Billet d'État for the October 2001 States.

Yours faithfully,

L. C. MORGAN,

President,

Advisory and Finance Committee.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 14TH DAY OF NOVEMBER,
2001

The States further resolved as follows concerning Billet d'Etat No. XXI
dated 12th October, 2001

(Meeting adjourned from 1st November, 2001)

XXV. After consideration of the Requête dated 8th August, 2001 signed by Deputy B. Russell and fifteen other Members of the States:-

TO NEGATIVE THE PROPOSITION that the Sunday Trading (Guernsey) Law, 1973, and the Sunday Trading (Implementation) Ordinance, 1974, shall be repealed and the States Resolution dated 11th November, 1999 (on Article VII of Billet d'Etat No. XVIII of 1999) concerning Sunday trading shall be rescinded so that the legal restrictions in respect of Sunday trading are removed.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

**THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS
(STANDARDS OF TREATMENT, OPERATORS AND PREMISES)
REGULATIONS, 2001**

**THE TATTOOING, PIERCING, ACUPUNCTURE AND ELECTROLYSIS
(PRESCRIBED FEES) REGULATIONS, 2001**

In pursuance of the provisions of section 19(2) of The Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000, the above Regulations made by the States Board of Health on the 28th August, 2001 were laid before the States.

**THE AIR TRANSPORT LICENSING (EXEMPTION OF AIR TAXI SERVICES)
REGULATIONS, 2001**

In pursuance of the provisions of section 24(3) of the Air Transport Licensing (Guernsey) Law, 1995, the Air Transport Licensing (Exemption of Air Taxi Services) Regulations, 2001, made by the States Transport Board on the 31st August, 2001, were laid before the States.

K. H. TOUGH
HER MAJESTY'S GREFFIER