

BILLET D'ÉTAT No. XXVI, 2007

12th December 2007

	<i>Page</i>
The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007	1
Projet de Loi entitled “The Guernsey Bar (Bailiwick of Guernsey) Law, 2007”	19
Projet de Loi entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007”	70
Projet de Loi entitled “The Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007”	127
The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance	130
The Customs and Excise (General Provisions) (Amendment) Ordinance, 2007	132
The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2007	135
The Elections Ordinance, 2007	138

The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007

THE STATES, in pursuance of their Resolutions of 28 September, 2005^a, and 27th July, 2006^b and [2007^c], and in exercise of the powers conferred on them by sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^d and all other powers enabling them in that behalf, hereby order:-

Amendment of the Terrorism Law.

1. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("**the Law**") is amended as follows.

(2) In section 1 ("Terrorism: interpretation."), in paragraph (b), after the word "government" insert "or an international organisation".

(3) For section 12 ("Disclosure of information: duty of persons not connected with Financial Services Businesses."), substitute the following section

-

"Failure to disclose knowledge or suspicion etc. of terrorist financing- non financial services businesses.

12. (1) A person commits an offence if each of the following conditions is satisfied.

^a Article XI of Billet d'État No. XIV of 2005.

^b Article XXIV of Billet d'État No. XIII of 2006.

^c Article [] of Billet d'État No [] of 2007.

^d Order in Counsel No. XVI of 2002 as amended by No. XIII of 2006.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a police officer.

(6) But a person does not commit an offence under this section if-

- (a) he does not know or suspect that another person is engaged in terrorist financing and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,
- (c) he has some other reasonable excuse for not disclosing the information or other matter, or
- (d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007

or any other enactment, and

- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise."

(4) In section 13 ("Disclosure of information: permission.") -

(a) in the heading, after the word "information" insert "relating to terrorist property".

(b) subsection (2) is repealed,

(c) in subsection (3), for "Subsections (1) and (2)" substitute "Subsection (1)", and

(d) in subsection (4) -

(i) in paragraph (b) -

(A) for "kinds" substitute "kind", and

(B) the words "and section 12(2)" are repealed, and

(ii) for "subsections (1) and (2)" substitute "subsection (1)".

(5) For sections 15 ("Failure to disclose: financial services businesses.") and 16 ("Protected disclosures.") substitute the following sections -

"Failure to disclose knowledge or suspicion etc. of terrorist financing - financial services businesses.

15. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter -

- (a) to a nominated officer or a police officer,
- (b) in the form and manner (if any) prescribed for

the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this section if-

- (a) he has a reasonable excuse for not disclosing the information or other matter,
- (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or
- (c) subsection (7) applies to him.

(7) This subsection applies to a person if -

- (a) he does not know or suspect that another person is engaged in terrorist financing, and
- (b) he has not been provided by his employer with such training as is required by regulations made under section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which -

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) For the purposes of a disclosure to a nominated officer-

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the business of which the person carries out a function (whether or not for gain or reward),

and

- (b) references to employment are to be construed accordingly.

(11) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(12) But subsection (11) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(13) A disclosure to a nominated officer or to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

Failure to disclose knowledge or suspicion etc. of terrorist financing - nominated officers in financial services businesses.

15A. (1) A person who is a nominated officer under section 15(9)(a) commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 15.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter -

- (a) to a police officer,
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

Penalties for offences under sections 12, 15 and 15A.

15B. A person guilty of an offence under section 12, 15 or 15A is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Power to prescribe form and manner of, and other matters concerning, disclosures.

15C. (1) The States of Guernsey Home Department may by regulations prescribe -

- (a) the form and manner in which a disclosure under section 12, 15 or 15A must be made, and
- (b) such other matters as are reasonably necessary to enable any person to whom a disclosure is made under this Law, or any other enactment, to obtain additional information.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning-

- (a) the period of time within which any additional

information must be supplied by the discloser following its request,

- (b) the form and manner in which any such request must be made, and
- (c) the creation, trial (summarily or on indictment) and punishment of offences, provided that the penalties for the punishment of any such offences shall not exceed those prescribed under section 15B.

(3) A disclosure made in pursuance of a request made under regulations under subsection (1) does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(4) For the purposes of this section -

"additional information" -

- (a) means information which is reasonably necessary to enable the person to whom any disclosure is made to decide -
 - (i) where the disclosure concerns terrorist financing, whether to start a terrorist financing investigation, or
 - (ii) where the disclosure concerns any other

matter, whether to pass the information on so that a decision may be made as to whether to start a criminal investigation in the Bailiwick or elsewhere, and

- (b) includes financial, administrative and law enforcement information,

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

"discloser" means the person making a disclosure under any provision referred to in subsection (1)(a), and

"a terrorist financing investigation" is an investigation into whether a person has engaged in terrorist financing."

- (6) In section 40 ("Disclosure of information, etc."), in subsection (3) for the figures and word "12 to 16" substitute "12 to 15A".

- (7) In section 79 ("Interpretation.") -

- (a) for the definition of **"financial services businesses"** substitute -

"financial services business" has the same meaning as in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999," and

- (b) insert the following definitions in the appropriate places -

"**business**" includes any trade, profession or economic activity,"

"**information**" includes documents,"

"**non financial services business**" is a business which is not a financial services business, including any voluntary organisation,"

"**terrorist financing**" means doing any act which -

- (a) constitutes an offence under section 8, 9, 10 or 11 and, for the purposes of this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so -

(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1, or

(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph

(a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,".

(8) In section 80 ("Index of defined expressions.") -

(a) for the reference relating to the expression "Nominated officer" substitute -

"nominated officer.....section 15(9)", and

(b) insert the following references to expressions at the appropriate places -

"additional information.....section 15C(4)",

"business.....section 79",

"criminal investigation.....section 15C(4)",

"disclosersection 15C(4)",

"information.....section 79",

"non financial services business.....section 79",

"terrorist financing investigation.....section 15C(4)",

"terrorist financing.....section 79(8)".

(9) In section 82 ("General provisions as to subordinate legislation.") -

(a) for "regulation" wherever appearing, substitute "regulations",

(b) for the full stop at the end of subsection (1)(b) substitute a semi-colon,

(c) after subsection (1)(b) insert -

"and

(c) in the case of regulations, shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of any new regulations.", and

- (d) in subsection (5), for the words "subsection (4) or (5)" substitute "subsection (3) or (4)".

(10) In paragraph 1(1)(d) of Schedule 2 ("FORFEITURE ORDERS), for the word and figures "section 23(7)" substitute "section 18(7)".

Interpretation.

2. (1) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

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

Extent.

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

4. This Ordinance may be cited as the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

Commencement.

5. This Ordinance shall come into force on the 15th December 2007.

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

PROJET DE LOI

ENTITLED

The Guernsey Bar (Bailiwick of Guernsey) Law, 2007

ARRANGEMENT OF SECTIONS

PART I INCORPORATION OF THE GUERNSEY BAR

1. Incorporation of the Guernsey Bar.
2. Objects.
3. Power to make regulations.
4. Rules as to the conduct and management of affairs.
5. Officers.
6. Members of the Bar Council.
7. Membership of the Bar.
8. Liability of Members.
9. Property to vest in the Bar.
10. Annual General Meetings.
11. Accounts and audits.
12. Registered office.
13. Application of assets and income.
14. The Register of Advocates.
15. Offences.
16. Employment of any person who has been disbarred or suspended from practice as an Advocate.

PART II DISCIPLINE OF ADVOCATES

17. La Chambre de Discipline.
18. The Chambre Panels.
19. The President of the Chambre.
20. The Registrar of the Chambre.
21. Action upon receipt of a complaint.
22. Investigation and initial disclosure.
23. Selection of members to constitute the Chambre.
24. Directions.
25. Proceedings of the Chambre.
26. Powers of the Chambre to take evidence.
27. Decision of and disposals available to the Chambre.
28. Appeals against decisions of the Chambre.
29. Reference by the Chambre to the Royal Court.

- 30. Appeal to the Court of Appeal.
- 31. Performance of functions by the Deputy Bâtonnier.
- 32. Fines.

PART III

DISCLOSURE OF INFORMATION BY AND TO THE SUPERVISORY AGENCY

- 33. Disclosure of information by the supervisory agency.
- 34. Disclosure of information to the agency by relevant person.

PART IV

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

- 35. The Royal Court and Her Majesty's Procureur.
- 36. Protection of persons acting in good faith.
- 37. Offences.
- 38. Proceedings to be confidential.
- 39. Power to make rules.
- 40. General provisions as to subordinate legislation.
- 41. Interpretation.
- 42. Repeals.
- 43. Citation.
- 44. Commencement.

Schedule: Powers

PROJET DE LOI

ENTITLED

The Guernsey Bar (Bailiwick of Guernsey) Law, 2007

THE STATES, in pursuance of their resolution of the 25th July, 2007^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

INCORPORATION OF THE GUERNSEY BAR

Incorporation of the Guernsey Bar.

1. (1) The association called "the Guernsey Bar" ("**the former association**") is incorporated by the name of "the Guernsey Bar" ("**the Bar**").

(2) The Bar –

(a) is a body corporate with perpetual succession and a common seal, and

(b) may sue and be sued in its name.

(3) The Bar may exercise all the powers that a natural person may exercise for the purpose of carrying out its objects and, without limitation, may exercise the powers set out in the Schedule to this Law.

Objects.

^a Article VII of Billet d'Etat XIX of 2007.

2. The objects of the Bar are to -

- (a) encourage and promote the upholding of the rule of law,
- (b) promote the efficient and fair administration of justice,
- (c) maintain high standards of professional conduct among its members including, without limitation -
 - (i) to protect the public and others against the negligence and wilful misconduct of any Advocate, and
 - (ii) to ensure that the professional fees and charges of any Advocate are fair and reasonable,
- (d) maintain effective complaints and disciplinary procedures,
- (e) promote the education and training of Advocates,
- (f) encourage and promote the study of law,
- (g) conduct research into, and promote the views of Advocates on matters affecting the administration of justice, including substantive law reform,
- (h) promote the interests of Advocates in such manner as the Bar may think fit both within and outside the Bailiwick, and
- (i) do all such things as are reasonably incidental or conducive to the attainment of those objects.

Power to make regulations.

3. (1) The Bar may make regulations -
 - (a) requiring Advocates to hold valid practising certificates issued by such person or body, in respect of such period and upon payment of such fee as may be specified,
 - (b) requiring Advocates to obtain and maintain in force professional indemnity insurance in respect of such risks and such minimum amount as may be specified,
 - (c) concerning the professional conduct of Advocates,
 - (d) relating to the obligation of Advocates to undertake continuing professional development by way of such activities as may be specified,
 - (e) for the resolution of any dispute between an Advocate and any of his clients in respect of professional fees or charges raised by the Advocate, and
 - (f) for all such matters as are reasonably necessary to give effect to Part I of this Law.
- (2) No regulations under subsection (1) shall come into force until they have been -
 - (a) approved by Her Majesty's Procureur, and
 - (b) sanctioned by the Royal Court.

Rules as to the conduct and management of affairs.

4. (1) The Bar may, from time to time, by special resolution passed at a general meeting make all such rules as to the conduct and management of its affairs as may be necessary ("**the Rules**") and (without prejudice to the generality of the foregoing) as to -

- (a) the calling, conduct and proceedings of general meetings including, without limitation, the entitlement of any Advocate to vote,
- (b) the constitution and election of the Bar Council ("**the Council**") to act as governing body of the Bar, and the appointment by the Council of such sub-committees for such purposes and with such powers as the Council deems necessary or expedient,
- (c) the proceedings, powers and duties of the Council and any sub-committees,
- (d) the tenure, powers and duties of, and appointment to, the offices of the Bar, and
- (e) the method of changing the Rules.

(2) Rules under subsection (1) may provide -

- (a) that all powers conferred by this Law on the Bar, other than powers required to be exercised in general meeting, may be exercised by the Council, and
- (b) for the delegation of any such power by the Council, with or without such conditions, rules or limitations as it may see fit,

to any subcommittee appointed by it under the Rules,

(3) Rules under subsection (1) shall not come into force until they have been -

(a) approved by Her Majesty's Procureur, and

(b) sanctioned by the Royal Court.

Officers.

5. (1) The officers of the Bar are -

(a) the Bâtonnier,

(b) the Deputy Bâtonnier,

(c) the Secretary, and

(d) the Treasurer,

who shall be elected and hold office in the manner and for the periods set out in the Rules.

(2) The Bâtonnier and the Deputy Bâtonnier shall not practise in or from the same firm of Advocates.

(3) The officers of the former association shall upon the incorporation of the Bar become the first officers of the Bar and shall each hold office until the first election for their positions under the Rules.

Members of the Council.

6. The members of the Bar Council of the former association shall, upon the incorporation of the Bar, become the first members of the Council and shall each hold office until the first elections for their position under the Rules.

Membership of the Bar.

7. (1) Subject to the provisions of this Law, any person who -
- (a) upon incorporation of the former association, is an Advocate,
or
 - (b) after the incorporation of the former association, is admitted
as an Advocate,

shall be a member of the Bar.

- (2) Every Advocate shall register on the Register of Advocates.

Liability of Members.

8. (1) No Advocate shall be liable for or to contribute towards the payment of the liabilities of the Bar beyond the amount of any subscription, contribution or other debt due from him to the Bar.

(2) For the purposes of this section only, the Bar includes the former association.

Property to vest in the Bar.

9. All real and personal property (and including for the avoidance of doubt, any monies) vested in the former association or in any person in trust for the former association shall, upon the incorporation of the former association, be vested in the Bar, which shall be subject to and shall discharge all obligations and liabilities to which the former association was subject immediately prior to incorporation.

Annual General Meetings.

10. A general meeting of the Bar, to be designated as the Annual General Meeting ("**the Annual General Meeting**"), shall be held once in every calendar year.

Accounts and Audits.

11. Proper accounts should be kept of all sums received and expended by the Bar and, at least once in every calendar year, the accounts shall be examined and certified as true and fair accounts by an auditor elected at the Annual General Meeting.

Registered office.

12. (1) The Bar shall establish and maintain in the Island of Guernsey a registered office at which all instruments for service upon the Bar shall be served.

(2) Notice of the address of the registered office and of any change thereof shall be given in writing to Her Majesty's Greffier within 7 days of the establishment or change, as the case may be.

Application of assets and income.

13. The assets and income of the Bar may be applied only in furtherance of the objects in section 2 or for such other purposes as are, for the time being, authorised or required by any enactment or rule of law.

The Register of Advocates.

14. (1) Her Majesty's Greffier shall establish and maintain a register to be called the Register of Advocates ("**the Register**").

(2) The Register -

(a) need not be kept in documentary form,

(b) for each Advocate registered, shall contain -

(i) his name,

(ii) the name of -

(A) any firm, or

(B) other institution,

of which he is a member or an employee, and any address from where he practises in the Bailiwick or elsewhere,

(iii) all professional legal qualifications that he holds,

(iv) the date of all qualifications in (iii),

(v) the details of any professional conduct complaint proved against him in any jurisdiction,

(vi) the disposal of any complaint in (v),

(vii) notwithstanding the provisions of any enactment concerning the rehabilitation of offenders, any conviction or caution for an offence committed in any jurisdiction and which was punishable by a term of imprisonment exceeding 2 years,

(viii) any sentence consequent upon any conviction in (vii),
and

(ix) the date of his admission to the Guernsey Bar.

(3) An Advocate shall -

- (a) provide to Her Majesty's Greffier within 28 days of his request any information which must be contained in the Register, and
- (b) give notice of any change of any information contained in the register to Her Majesty's Greffier within 28 days of that change.

(4) Subject to such circumstances as may be prescribed, in which Her Majesty's Greffier may impose a prohibition or restriction on the publication or communication of information appearing on, or relating to, any entry on the Register of Advocates -

- (a) the Register of Advocates shall be open for public inspection, and
- (b) Her Majesty's Greffier shall, on payment of the prescribed fee, supply copies and extracts (certified or uncertified) of any entry in it.

(5) An Advocate may be deregistered from the Register -

- (a) on his application to Her Majesty's Greffier, or
- (b) by his disbarment by the Royal Court.

(6) An application for deregistration under subsection (5)(a) shall be made in such form and manner as the Royal Court may by order determine.

(7) Upon -

(a) receipt of an application under subsection (5)(a), or

(b) the Royal Court disbarring an Advocate,

Her Majesty's Greffier shall deregister the Advocate from the Register.

(8) An Advocate who, pursuant to the requirements of subsection (3) -

(a) provides, causes or permits to be provided any information or document which he knows or believes to be false, misleading or deceptive in a material particular,

(b) recklessly provides, causes or permits to be provided any information or document which is false, misleading or deceptive in a material particular, or

(c) knowingly or recklessly fails to make full disclosure of the information required of him,

(d) knowingly fails to give notice of any material change of any information contained in the Register within 28 days of that change,

shall be guilty of an offence.

(9) A person guilty of an offence under -

- (a) subsection (8)(a), (b) or (c) is liable –
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, and
- (b) subsection (8)(d) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

Offences.

- 15.** (1) A person who falsely or recklessly –

- (a) claims to be, or
- (b) uses any name, title or other description which tends to –
 - (i) imply, or
 - (ii) mislead the public,

that he is authorised or qualified to practise as an Advocate shall be guilty of an offence.

- (2) Subject to subsection (3), a person –

- (a) other than –

- (i) an Advocate,
 - (ii) a consultant to an Advocate or firm of Advocates in the course of his consultancy, or
 - (iii) a person employed or otherwise supervised by an Advocate in the course of his employment or when under supervision (as the case may be), and
- (b) who -
- (i) gives advice to another person on the law of the Bailiwick or one of the jurisdictions in the Bailiwick, or
 - (ii) draws up a contract under the law of one of the jurisdictions of the Bailiwick for another person,

is guilty of an offence.

(3) It shall be a defence for a person ("**person A**") to prove that when he gave advice, or drew up any contract, as the case may be -

- (a) person A represented to the other person, or
- (b) the other person knew or ought reasonably to have known,

that person A did not fall within the list of persons in subsection (2)(a).

(4) A person guilty of an offence under subsection (1) or (2) shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Employment of any person who has been disbarred or suspended from practice as an Advocate.

16. (1) An Advocate ("**the relevant Advocate**") may only, in connection with his practice, employ, retain or remunerate any person who -

- (a) has been disbarred, or
- (b) is suspended from practice as an Advocate,

with the approval of the President of the Chambre and in accordance with such conditions as he may specify in giving such approval.

(2) Where the relevant Advocate wishes to employ, retain or remunerate a person under subsection (1), he shall apply to the President in such form and in such manner as the Royal Court shall by order determine.

(3) Where the President considers an application under subsection (2), he shall -

- (a) consult Her Majesty's Procureur, and
- (b) notify the Registrar of the request.

(4) The President shall -

- (a) make his decision to give or withhold his approval in writing, and

- (b) send it to the relevant Advocate and to the Registrar.

(5) Where the President gives his approval, the Registrar may appeal to the Royal Court on a point of law against the decision of the President –

- (a) to give his approval, or

- (b) to give his approval –

- (i) without specifying any conditions, or

- (ii) with the conditions in the terms specified.

(6) Where the President withholds his approval, the relevant Advocate may appeal to the Royal Court against that refusal.

(7) Any person who desires to appeal under subsection (5) or (6) shall, within 7 days of the sending of the decision of the President, lodge a notice of appeal with Her Majesty's Greffier in such form and in such manner as the Royal Court may determine.

(8) Notwithstanding subsection (7), the Royal Court may extend the time for the lodging of the notice of appeal if it considers that it would be in the interests of justice to do so.

(9) When disposing of an appeal, the Royal Court –

- (a) shall give a reasoned decision in writing,
- (b) may confirm or reverse the decision of the President,
- (c) where approval is given, may add, vary or remove any condition specified by the Court in relation to that approval, and
- (d) may make an order of costs in respect of the appeal proceedings as it sees fit.

PART II

DISCIPLINE OF ADVOCATES

La Chambre de Discipline.

17. (1) La Chambre de Discipline (hereinafter referred to as "**the Chambre**") shall hear any complaint concerning a member of the Bar in respect of professional misconduct.

(2) For the purposes of this Part, a complaint in respect of professional misconduct includes a complaint that an Advocate has breached the Proceeds of Crime Regulations.

(3) For the purposes of hearing a complaint under subsection (1), the Chambre shall consist of one member from each of the following categories -

- (a) a lay person,
- (b) an Advocate, and
- (c) a senior lawyer.

- (4) The proceedings of the Chambre shall be inquisitorial in their nature.

The Chambre Panels.

- 18.** (1) The Appointments Committee, which shall comprise -

- (a) the Bailiff,
- (b) the Senior Jurat, and
- (c) the Bâtonnier for the time being,

shall appoint a panel of 5 persons for each category of member of the Chambre.

- (2) A person shall only be eligible for appointment in the category of -

- (a) **"lay person"** if he is -
 - (i) ordinarily resident in the Bailiwick,
 - (ii) not -
 - (A) a Jurat of the Royal Court of Guernsey or of the Court of Alderney,
 - (B) a member of the Juvenile Court Panel, or
 - (C) a member of any tribunal in the Bailiwick, and
 - (iii) not and has not ever been a member of a legal profession in any jurisdiction,

(b) "**Advocate**" if he is -

(i) an Advocate,

(ii) of at least 15 years' standing, and

(iii) not -

(A) an officer of the Bar, or

(B) a member of the Bar Council, and

(c) "**senior lawyer**" if he is -

(i) in any jurisdiction in the British Islands, a -

(A) practitioner, or

(B) member of the judiciary,

of at least 15 years' standing, and

(ii) not an Advocate.

(3) A member of a panel shall -

(a) be appointed as a member of that panel for a term not exceeding 5 years, but may continue to hear any complaint in respect of which he had been selected as a member of the Chambre before the expiry of that term, and

- (b) not be eligible for reappointment within a period of 5 years of the expiry of his previous term of appointment.
- (4) A member of a panel may -
- (a) resign by notice in writing delivered to the Appointments Committee, and
 - (b) only be removed from that panel -
 - (i) on ceasing to be eligible to be a member of that panel,
 - (ii) if he is -
 - (A) an Advocate or senior lawyer who is a practitioner, on being suspended from practice or disbarred, or
 - (B) a senior lawyer who is a member of the judiciary, on being suspended or removed from office,
 - (iii) on becoming bankrupt, and
 - (iv) on grounds of -
 - (A) misconduct, or
 - (B) incapacity,

proved to the satisfaction of the Royal Court.

(5) Where a member of a panel resigns or is removed from that panel, the Appointments Committee shall select a person to replace him.

The President of the Chambre.

19. (1) The President of the Chambre ("**the President**") shall -

- (a) be selected by the Appointments Committee from the panel of lay persons, and
- (b) hold office for a period not exceeding 5 years.

(2) The President shall have the responsibility for -

- (a) considering with the Bâtonnier whether a complaint should be referred to the Registrar,
- (b) selecting the members of the Chambre to hear a complaint,
- (c) giving directions for the management of any complaint before the Chambre, and
- (d) giving approval to an Advocate to permit him to employ, retain or remunerate a person who has been suspended from practice as an Advocate or disbarred.

(3) The President may -

- (a) resign by notice in writing delivered to the Bâtonnier, and

(b) only be removed from office before the expiry of his term -

(i) on ceasing to be eligible to be a member of the panel of lay persons,

(ii) on becoming bankrupt, and

(iii) on grounds of -

(A) misconduct, or

(B) incapacity,

proved to the satisfaction of the Royal Court.

The Registrar of the Chambre.

20. (1) The Registrar of the Chambre ("**the Registrar**") shall be appointed by the Royal Court for a term not exceeding 5 years.

(2) The Registrar shall be responsible for -

(a) the collection and presentation of evidence in respect of a complaint made against a member of the Bar,

(b) the organisation of hearings of the Chambre, and

(c) the provision of advice and assistance to -

(i) the President (except in relation to the exercise of his powers under sections 16 and 21), and

(ii) the Chambre.

(3) A person shall only be eligible for appointment as the Registrar if he is a practitioner in any of the jurisdictions within the British Islands of at least 5 years standing.

(4) The Registrar may –

(a) resign by notice in writing delivered to Her Majesty's Greffier, and

(b) only be removed from office before the expiry of his term –

(i) on becoming bankrupt, and

(ii) on grounds of –

(A) misconduct, or

(B) incapacity,

proved to the satisfaction of the Royal Court.

(5) The Registrar may appoint any person to assist him in the exercise of any responsibility listed in subsection (2) on such terms and conditions as he thinks fit.

Action upon receipt of a complaint.

21. (1) Upon receipt of a complaint against an Advocate ("**the respondent**"), the President and the Bâtonnier shall –

(a) give notice of the receipt of the complaint to the respondent,

and

- (b) consider if the complaint should be referred to the Registrar.

(2) No complaint, other than a complaint alleging misconduct by breaching the Proceeds of Crime Regulations, shall be entertained if it is received more than 6 months after the last of the events giving rise to the complaint, unless the President is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.

(3) In considering a complaint under subsection (1)(b), the President and Bâtonnier may request –

- (a) the respondent to comment in writing on the complaint within such period as they see fit, and
- (a) the complainant to respond in writing to any such comment within such period as they see fit.

(4) If the President and the Bâtonnier consider that a complaint is –

- (a) vexatious,
- (b) frivolous, or
- (c) not one of professional misconduct,

the Bâtonnier shall refuse to refer the complaint to the Registrar and inform the complainant of the fact of and reasons for that refusal.

(5) If either the President or the Bâtonnier considers that the complaint does not fall within subsection (4), the Bâtonnier shall -

- (a) refer the complaint to the Registrar,
- (b) send to the Registrar any comments made under subsection (3), and
- (c) inform the complainant, the respondent and Her Majesty's Procureur of that referral.

(6) For the purposes of subsection (1), "complaint" means a written complaint and where the complaint is not initially made in writing, the Bâtonnier may -

- (a) require the complainant to state the complaint in writing, or
- (b) cause it to be stated in writing on the complainant's behalf,

as he thinks fit in all the circumstances.

Investigation and initial disclosure.

22. (1) Upon receipt of a complaint referred to him by the Bâtonnier, the Registrar shall make such investigations in respect of that complaint as he thinks fit.

(2) Without prejudice to the generality of subsection (1), for the purpose of investigating a complaint, the Registrar may -

- (a) take statements from any witness as to fact (including the complainant, the respondent and any third party),
- (b) gather any document or other evidence,

- (c) instruct any expert witness, and
- (d) request any legal advice,

as he considers may bear upon the complaint.

(3) Without prejudice to the generality of subsection (2)(b), the Registrar may -

- (a) require the respondent -
 - (i) to produce or deliver, or
 - (ii) to cause to be produced or delivered,

to him any relevant documents in the custody or control of the respondent or his firm or institution, and
- (b) retain possession of those documents until his investigation and any disciplinary proceedings that arise from the investigation are completed.

(4) Subsection (3) does not limit a right to decline to produce or deliver a document to the Registrar on the ground of -

- (a) legal professional privilege, or
- (b) any rule against self-incrimination.

(5) The Registrar may only use a document or information obtained by him under this section -

- (a) to investigate the complaint, or
- (b) to assist with any investigation for the purposes of proceedings in any jurisdiction which are –
 - (i) of a disciplinary, regulatory or criminal nature, and
 - (ii) related to the complaint.

(6) If after the completion of his investigations the Registrar decides that a prima facie case is -

- (a) disclosed, he shall –
 - (i) refer the complaint to the Chambre,
 - (ii) inform the complainant, the respondent, the President and Her Majesty's Procureur of that referral, and
 - (iii) send a statement of facts to the respondent, the President and the Chambre, and
- (b) not disclosed, he shall –
 - (i) refuse to refer the complaint to the Chambre, and
 - (ii) inform the complainant and the respondent of the fact of and the reasons for that refusal.

- (7) For the purposes of subsection (6), a statement of facts shall include –
- (a) the name of the complainant,
 - (b) the specific allegations in reasonable particularity, and
 - (c) a summary of the evidence in support of the complaint.

(8) For the avoidance of doubt, the Registrar is not precluded from exercising any of his powers under this section on the ground that he has already referred the complaint to the Chambre.

(9) For the purposes of subsections (2) to (4), "the Registrar" includes a reference to a person appointed to assist him when acting with his permission.

Selection of members to constitute the Chambre.

23. The members of the Chambre constituted to hear a complaint shall be selected from each of the panels in accordance with section 17(3) by the President.

Directions.

24. Upon a complaint being referred to the Chambre, the President shall give such directions as he sees fit to ensure that the complaint is considered fairly and expeditiously.

Proceedings of the Chambre.

25. (1) Subject to subsection (2), the Chambre shall hear any complaint in private.

(2) The Chambre may hear any complaint in public at the request of the respondent if it is satisfied that in all the circumstances it would be in the interests of justice to do so.

(3) Where the Chambre hears any complaint in public and a person who has not attained the age of 18 years is concerned in that complaint -

(a) no report shall be published which -

(i) reveals his name, address or school, or

(ii) includes any particulars which are reasonably likely to lead to his identification, and

(b) no picture shall be published which is or includes a picture of him.

(4) Any person who publishes any matter in contravention of this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the uniform scale, or both.

(5) Where a body corporate is guilty of an offence under this Law and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

(7) The members of the Chambre hearing a complaint shall decide which of them shall be the chairman.

(8) Any question shall be determined by a simple majority of the members of the Chambre.

(9) The standard of proof when determining if the respondent is guilty of professional misconduct by –

- (a) breaching the Proceeds of Crime Regulations, is the civil standard of proof (that is, the balance of probabilities), and
- (b) any other misconduct, is the criminal standard of proof (that is, beyond reasonable doubt).

(10) The Chambre shall be master of its own procedure but in any event shall afford an opportunity to –

- (a) the Registrar –
 - (i) to be heard,
 - (ii) to call evidence, and
 - (iii) to cross-examine any witness, and
- (b) the respondent –
 - (i) to be heard,
 - (ii) to give and call evidence on his own behalf, and
 - (iii) to cross-examine any witness.

(11) Where any member of the Chambre cannot continue to hear a complaint, the Chambre may, in the interests of justice and after hearing submissions from the Registrar and the respondent -

- (a) terminate the hearing of the complaint and request the President to select a new Chambre to hear it, or
- (b) where two members of the Chambre remain, continue to hear the complaint, whether or not the President has at its request selected a replacement from the same panel as the member of the Chambre who cannot continue to hear the complaint.

Powers of Chambre to take evidence.

26. (1) Without prejudice to any power of the President to make any direction under section 24, the Chambre may, by notice in writing, signed by its chairman, require a person -

- (a) to attend and give evidence before it in respect of a complaint which it is hearing,
- (b) to produce to it any documents in that person's custody or control that relate to the subject matter of the complaint.

(2) The Chambre may require a person to give evidence on oath or under affirmation and for that purpose any member of the Chambre may administer an oath or take an affirmation.

(3) A person required to give evidence before or produce any document to the Chambre pursuant to subsection (1) shall have the same privileges and immunities as if he were giving evidence before or producing a document to the Royal Court.

Decision of and disposals available to the Chambre.

27. (1) At the conclusion of the proceedings, the Chambre shall give a reasoned decision in writing as to its findings in respect of the complaint and shall deal with it in one of the following ways -

- (a) by dismissing it, or
- (b) if it is satisfied the complaint is proved and that it constitutes professional misconduct by the respondent, by disposing of it -
 - (i) by privately reprimanding him,
 - (ii) by publicly rebuking him,
 - (iii) by fining him in a sum not exceeding level 3 on the uniform scale,
 - (iv) by ordering that he completes such training of such nature and duration as the Chambre shall direct and to provide satisfactory proof of compliance with this order to the Chambre,
 - (v) by suspending him from practice as an Advocate for a period not exceeding 3 months, or
 - (vi) by referring the complaint to the Royal Court for consideration of –

- (A) fining him in a sum exceeding level 3 on the uniform scale,
- (B) suspending him for a period of 3 months or more, or
- (C) disbarring him.

(2) The Chambre may, in addition to the disposals listed in subsection (1), make an order that the respondent pay the reasonable costs, or a proportion of the reasonable costs, of the proceedings.

(3) The Chambre shall send a copy of its reasoned decision to –

- (a) the complainant,
- (b) the Registrar,
- (c) the respondent, and
- (d) Her Majesty’s Procureur.

(4) Where the Chambre refers a complaint to the Royal Court under subsection (1)(b)(vi), it shall send a copy of its reasoned decision to the Court.

Appeals against decisions of the Chambre.

28. (1) The following persons shall have a right of appeal against a decision of the Chambre to the Royal Court -

- (a) the Registrar, and

(b) the respondent.

(2) Any person who desires to appeal under subsection (1) shall, within 28 days of the sending of the reasoned decision of the Chambre, lodge a notice of appeal with Her Majesty's Greffier in such form and in such manner as the Royal Court may determine.

(3) Notwithstanding subsection (2), the Royal Court may extend the time for the lodging of the notice of appeal if it considers that it would be in the interests of justice to do so.

(4) For the avoidance of doubt, any appeal shall be presented to the Royal Court by an Advocate instructed on behalf of the Registrar.

(5) When disposing of an appeal, the Royal Court –

- (a) shall give a reasoned decision in writing,
- (b) shall have the powers of the Chambre under section 27 and its own powers under section 29 to dispose of the complaint and make an order of costs, and
- (c) may make an order of costs in respect of the appeal proceedings as it sees fit.

Reference by the Chambre to the Royal Court.

29. (1) Where the Chambre refers a complaint to the Royal Court, the Court shall consider the most appropriate disposal in all the circumstances.

(2) The Royal Court shall afford an opportunity to –

- (a) an Advocate instructed by the Registrar to present the facts as found by the Chambre, and
 - (b) the respondent to be heard.
- (3) The Royal Court may deal with the complaint -
- (a) by privately reprimanding the respondent,
 - (b) by publicly rebuking him,
 - (c) by fining him,
 - (d) by ordering him to complete such training of such nature and duration as the Royal Court shall direct and to provide satisfactory proof of compliance with that order to the Royal Court,
 - (e) by suspending him from practice as an Advocate, or subjecting his practice as an Advocate to conditions, for such period as may be specified by the Court, or
 - (f) by disbarring him.
- (4) The Royal Court may make any order as to the costs of the proceedings before the Court as it thinks fit.

Appeal to the Court of Appeal.

30. (1) Subject to subsection (3), the following persons shall have a right of appeal on a point of law to the Court of Appeal against a decision of the Royal Court under section 28 or 29 -

(a) the Registrar, and

(b) the respondent.

(2) Any person who desires to appeal shall within 28 days of the sending of the reasoned decision of the Royal Court give to the Registrar of the Court of Appeal a notice of application for leave to appeal.

(3) An appeal to the Court of Appeal under this Law lies only with the leave of that Court and section 21 of the Court of Appeal (Guernsey) Law, 1961^b ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this Law as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(4) On an appeal under this section, the Court of Appeal may -

(a) confirm or reverse the decision of the Royal Court, and

(b) substitute any disposal listed in section 28 or 29 (as the case may be) for the disposal made by the Royal Court.

(5) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal are in the discretion of that court.

Performance of functions by the Deputy Bâtonnier.

31. For the avoidance of doubt, any function of the Bâtonnier under this Part shall be exercised by the Deputy Bâtonnier -

(a) where the Bâtonnier so requests,

^b Ordres en Conseil Vol. XVIII, p. 315.

- (b) in the absence or incapacity of the Bâtonnier, or
- (c) where the respondent practises in or from the same firm as the Bâtonnier.

Fines.

32. Where the Chambre, the Royal Court or the Court of Appeal disposes of a complaint under this Part by fining a respondent, that fine is payable to Her Majesty's Receiver-General and shall be recoverable as a civil debt.

PART III

DISCLOSURE OF INFORMATION BY AND TO THE SUPERVISORY AGENCY

Disclosure of information by the supervisory agency.

33. (1) This section applies to information which is held by or on behalf of the supervisory agency ("**the agency**") including information obtained before the coming into force of this section.

(2) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise prevents the disclosure to Her Majesty's Procureur, a police officer, the Registrar or Her Majesty's Greffier, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of -

- (a) any criminal investigation or investigation in contemplation of disciplinary proceedings which is being or may be carried out, whether in the Bailiwick or elsewhere,
- (b) any criminal or disciplinary proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,

- (c) the initiation or bringing to an end of any such investigation or proceedings, or
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(3) No disclosure of information to which this section applies shall be made under this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

(4) Information to which this section applies shall not be disclosed to -

- (a) Her Majesty's Procureur,
- (b) a police officer,
- (c) the Court of Appeal,
- (d) the Royal Court (however constituted),
- (e) Her Majesty's Greffier,
- (f) the Bâtonnier for the time being in relation to his functions under this Law,
- (g) the President of the Chambre,
- (h) the Registrar, or
- (i) the Chambre,

by virtue of this section except by or on behalf of the agency.

(5) Information obtained by means of a disclosure authorised by subsection (2) and (3) shall not be further disclosed by Her Majesty's Procureur, a police officer, the Registrar or Her Majesty's Greffier except -

- (a) for a purpose mentioned in those subsections, and
- (b) with the consent of the agency.

(6) A consent for the purposes of subsection (5) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(7) Nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001^c, of personal data which are not exempt from those provisions.

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

Disclosure of information to the agency by relevant person.

34. (1) A relevant person may disclose to the agency any information in his possession which he reasonably believes may assist the agency to carry out its functions.

(2) The information that may be disclosed under this section includes information obtained before this Law came into force.

^c Order in Council No. V of 2002.

(3) No disclosure of information shall be made under this section unless the relevant person who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

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

(5) A disclosure under this section does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) For the purposes of this section, "**a relevant person**" means -

- (a) Her Majesty's Procureur,
- (b) the Court of Appeal,
- (c) the Royal Court (however constituted),
- (d) Her Majesty's Greffier,
- (e) the Bâtonnier for the time being in relation to his functions under this Law,
- (f) the President of the Chambre,
- (g) the Registrar,
- (h) the Chambre,
- (i) a police officer who holds the rank of inspector or above, or

- (j) a customs officer of the grade of senior investigation officer or above.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

The Royal Court and Her Majesty's Procureur.

35. This Law is without prejudice to the exercise or performance of the rights, powers and functions of -

- (a) the Royal Court, and
- (b) Her Majesty's Procureur,

existing independently of this Law in relation to Advocates and the Bar.

Protection of persons acting in good faith.

36. No person shall incur any criminal or civil liability in respect of any act or omission in the exercise or purported exercise of any function conferred on him by or under Law unless it is proved that the person was acting in bad faith.

Offences.

37. (1) A person who -

- (a) in proceedings before the Chambre, or in making any statement or providing any information or document to the Registrar when acting in the exercise or purported exercise of their functions under this Law -
 - (i) makes a statement which he knows or believes to be

false, misleading or deceptive in a material particular,

- (ii) recklessly makes a statement which is false, misleading or deceptive in a material particular, or
 - (iii) produces, or causes or permits to be produced, any information or document which he knows or believes to be false, misleading or deceptive in a material particular,
- (b) on being duly summoned as a witness before the Chambre, fails without reasonable excuse (proof of which shall lie on him) to attend,
- (c) on attending before the Chambre as a witness, fails, when legally required to do so -
- (i) to take the oath or affirmation,
 - (ii) to produce any document in his possession, custody or power, or
 - (iii) to answer any question put to him,
- (d) does any other thing before the Chambre which, if done before the Royal Court, would constitute a contempt of court, or
- (e) without reasonable excuse (proof of which shall lie on him) obstructs or hinders the Registrar in the exercise or purported exercise of their functions under this Law,

is guilty of an offence.

(2) A person guilty of an offence by virtue of subsection (1) is liable -

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

(3) For the purposes of subsection (1), "the Registrar" includes a reference to a person appointed to assist him when acting with his permission.

Proceedings to be confidential.

38. (1) No person shall disclose, except before the Chambre or with lawful excuse, any matter which came to his knowledge by reason of his being a member of the Chambre or by reason of his being present before the Chambre when it was sitting in private.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Power to make rules.

39. The Royal Court may by order make rules under this Law in respect of the Chambre.

General provisions as to subordinate legislation.

40. (1) Any Ordinance, regulation, order or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance,

regulation, order or rule, as the case may be, hereunder, and

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

(2) Any power conferred by this Law to make any Ordinance, regulation, order or rule may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Interpretation.

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

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

"Bailiwick" means the Bailiwick of Guernsey,

"bankrupt", in relation to an individual, includes an individual -

- (a) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^d,

"the Bar" has the meaning given in section 1,

"Bâtonnier" has the meaning given in section 5,

"the Council" has the meaning given in section 4,

"the Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961^e,

^d Ordres en Conseil Vol. VIII, p. 310.

^e Ordres en Conseil Vol. XVIII, p. 315.

"disbarred" means, in respect of an Advocate, the removal of his name from the Roll of Advocates,

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"Her Majesty's Greffier" includes any Deputy Greffier,

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

"the Juvenile Court Panel" means the panel established by section 5 of the Juvenile Court (Guernsey) Law, 1989^f,

"this Law" includes the Rules,

"officer" means any of the officers mentioned in section 5(1),

"police officer" means a member of the salaried police force of the Island of Guernsey,

"practitioner" means a person who -

(a) is entitled to practise, and

(b) practises,

law as a member of a legal profession in any jurisdiction,

"prescribed" means prescribed by order of the Royal Court,

^f

Ordres en Conseil Vol. XXX, p. 326.

"President" has the meaning given in section 19,

"Proceeds of Crime Regulations" means -

- (a) any regulation made under section 49 or 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^g, and
- (b) any rules, instructions and guidance made under such a regulation,

"publish" means to distribute, publicise or disseminate information by any medium, including by newspaper, by radio or television broadcast, or by the internet, and related expressions are to be construed accordingly,

"Register" has the meaning given in section 14,

"Registrar" has the meaning given in section 20,

"relevant Advocate" has the meaning given in section 16,

"relevant person" has the meaning given in section 34(6),

"Royal Court" means the Royal Court sitting as a Full Court,

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

"the Rules" means the Rules of the Bar made, approved and sanctioned in accordance with Section 4,

"Secretary" has the meaning given in section 5,

"special resolution" means a resolution that is passed by a majority of not fewer than two-thirds of the persons who, being entitled to do so, vote in person or by proxy,

"subordinate legislation" means any statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"supervisory agency" means any organisation appointed under the Proceeds of Crime Regulations to supervise compliance with these Regulations by practitioners,

"Treasurer" has the meaning given in section 5,

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^h, and

"years' standing" means years -

- (a) since the person was called to the Bar, or
- (b) post qualification experience as a lawyer,

^h

Ordres en Conseil Vol. XXXI, p. 278.

whichever is the longer.

(2) The Interpretation (Guernsey) Law, 1948ⁱ -

- (a) applies to the interpretation of this Law throughout the Bailiwick, and
- (b) in the absence of any provision to the contrary contained therein, applies to the interpretation of any subordinate legislation made under this Law and, for the avoidance of doubt in the case of any subordinate legislation, as it applies to the interpretation of a Guernsey enactment.

(3) Unless the context requires otherwise, references in this Law to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

Repeals.

42. The following provisions are hereby repealed –

- (a) Sections 5, 6 and 7 of the Ordonnance relative au Barreau et au Corps des Ecrivains^j, and
- (b) the Bar Ordinance, 1976^k.

ⁱ Ordres en Conseil Vol. XIII, p.355.

^j Recueil d’Ordonnances Tome VI, pg. 104.

^k Recueil d’Ordonnances Tome XX, pg. 269.

Citation.

43. This Law may be cited as the Guernsey Bar (Bailiwick of Guernsey) Law, 2007.

Commencement.

44. (1) This Law shall come into force on the day appointed by Ordinance of the States.

(2) An Ordinance under subsection (1) may -

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain such saving and transitional provisions as the States consider appropriate.

SCHEDULE

Powers

1. The Bar may -
 - (a) enter into contracts,
 - (b) acquire, hold and dispose of property (gratuitously or onerously, beneficially or on trust),
 - (c) create, execute or perform trusts,
 - (d) operate bank accounts,
 - (e) invest in stocks, funds, shares, securities and other investments,
 - (f) borrow or lend money (with or without having given or taken security),
 - (g) guarantee the performance of obligations by other persons, and
 - (h) participate in joint ventures with other persons.
2. The Bar may retain the services of any person and employ staff on such terms and conditions (including provision for pensions or gratuities) as it may agree.

PROJET DE LOI

ENTITLED

The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007

THE STATES, in pursuance of their Resolutions of the 27th July, 2006^a and the 25th July, 2007^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of Law of 1987.

1. The Protection of Investors (Bailiwick of Guernsey), Law, 1987, as amended^c ("**the Law**") is further amended as follows.

2. In the arrangement of sections to the Law -

(a) after the entry relating to section 2 insert the following subheading and entry -

"Duty of Commission"

^a Article XIX of Billet d'État No. XIII of 2006.

^b Articles IV and V of Billet d'État No. XIX of 2007.

^c Ordres en Conseil Vol. XXX, p. 281, amended by Vol. XXX, p. 243, Vol. XXXI, p. 278, Vol. XXXII, p. 324, No. XIII of 1994, No. XII of 1995, No. II of 1997, No. XVII of 2002, and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324, Tome XXVI, p. 333, Ordinances X and XX of 1998, and No. XXXIII of 2003.

2A. Commission to have regard to objectives.",

(b) in the heading to Part II after "authorisation" insert "or registration",

(c) for the entries relating to sections 8, 9, 11, 14, 20 and 23 and Schedules 3 and 4 substitute the following entries -

"8. Authorisation or registration of collective investment schemes."

"9. Imposition of conditions on authorisations or registrations."

"11. Revocation or suspension of authorisation or registration."

"14. Licensing, authorisation and registration rules."

"20. Authorised or registered collective investment scheme rules."

"23. Regulations limiting validity of licences, authorisations or registrations."

"Schedule 3: Requirements for authorised or registered collective investment schemes."

"Schedule 4: Minimum criteria for licensing.",

- (d) after the entry relating to section 27D insert the following entry -

"27E. Investigations by inspectors.",

- (e) for the subheading "Winding up etc." substitute "Intervention, administration and winding up",

- (f) before the entry relating to section 28 insert the following entry -

"28AA. Intervention and administration.",

- (g) after the entry relating to section 41H insert the following entries -

"Assistance to relevant overseas authorities

- 41I. Investigations etc. in support of relevant overseas authority.

Financial penalties and offences

- 41J. Powers of Royal Court to impose financial penalty for non-compliance.

- 41K. Offences.

Powers to investigate criminal offences

41L. Powers of investigation.

41M. Disclosure.

41N. Offences as to "tipping off." And

- (h) after the entry relating to section 42 insert the following entry-

"42A. Power of States to amend Law by Ordinance."

3. After section 2 of the Law insert the following subheading and section -

"Duty of Commission

"Commission to have regard to objectives.

2A. In carrying out its functions under this Law the Commission must have regard to the objectives of -

- (a) protecting -

(i) investors,

(ii) the public, and

(iii) the reputation of the Bailiwick as a financial centre,

- (b) ensuring that markets for controlled investments are fair, efficient and transparent, and

- (c) reducing risks to the financial system in the Bailiwick."

4. For section 4(3) of the Law, substitute the following subsections -

"(3) The Commission shall not grant an application for a licence unless satisfied that the criteria specified in Schedule 4 are fulfilled -

- (a) in relation to the applicant or licensee, and
- (b) in relation to any person who is or is to be a director, controller, manager or partner of the applicant.

(4) In considering whether or not the criteria specified in Schedule 4 are so fulfilled, the Commission -

- (a) shall take into account such written guidance and shall act in accordance with such written directions as may be given by the Committee under section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 in relation to controlled investment business, and
- (b) may take into account -
 - (i) the provisions of any code issued under section 41B, and

- (ii) any matter to which it may have regard under section 6 when considering whether or not to cancel or suspend a licence.

(4) The Commission may refuse an application for a licence which is not accompanied by the fee prescribed by regulations under section 3(1)(g) or which is otherwise not made in accordance with the provisions of this Law."

5. In section 5 of the Law -

- (a) in subsection (2)(b)(ii) the word "open-ended" is repealed, and
- (b) after subsection (2), insert -

"(3) In considering whether or not to impose, vary or rescind any condition in respect of a licence the Commission may, without prejudice to the generality of the foregoing provisions of this section, have regard to any matter to which it may have regard under section 4 or 6 when considering whether or not to grant an application for a licence or to cancel or suspend a licence."

6. In the heading to Part II of the Law after "authorisation" insert "or registration".

7. In the following provisions of the Law -

- (a) sections 7, 8(1), 8(2), 8(4), 8(5)(a) and (d), 9 to 11, 12(1), 14(2)(e), 20(1) to (3), 22(1)(c) and 27A,
- (b) the definitions of "**specified class**", "**designated manager**" and "**designated trustee or custodian**" in section 44(1), and
- (c) paragraph 1 of Schedule 3,

for each reference to an "authorised" collective investment scheme substitute a reference to an "authorised or registered" collective investment scheme.

8. In sections 8(5), 9(1), 11 and 28(1) of the Law for each reference to "an authorisation" substitute "an authorisation or registration".

9. In section 8 of the Law -

- (a) for the heading substitute -

"Authorisation or registration of collective investment schemes.",

- (b) for subsection (3)(a) substitute the following paragraph -

"(a) if it appears to the Commission that the scheme satisfies the requirements referred to in subsection (4) of this section and subject to section 7 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, grant the application and issue -

- (i) in the case of an application for authorisation,

an authorisation declaring that the scheme is an authorised collective investment scheme of a specified class,

- (ii) in the case of an application for registration, a registration declaring that the scheme is a registered collective investment scheme of a specified class, or ".

- (c) in subsection (5)(c) at the beginning insert "in the case of an authorised or registered open-ended collective investment scheme,",

- 10. For the heading to section 9 of the Law substitute -

"Imposition of conditions on authorisations or registrations."

- 11. In section 11 of the Law -

- (a) for the heading substitute -

"Revocation or suspension of authorisation or registration.",

- (b) in paragraphs (a) and (c) after the words "designated manager" insert "or, in the case of an authorised or registered open-ended collective investment scheme", and
- (c) in paragraph (d) after "the authorisation" insert "or registration".

12. In section 12(3)(a) of the Law after the words "apply to" insert "both authorised and registered collective investment schemes or to either of such schemes, to".

13. In sections 14(2)(a) and (d) and 22(1)(a) of the Law for the words "or authorisation" substitute ", authorisation or registration".

14. In section 14 of the Law -

(a) for the heading substitute -

"Licensing, authorisation and registration rules."

(b) in subsections (1) and (2)(b) and (c) for the words "and authorisations" substitute ", authorisations and registrations."

15. In section 18 of the Law -

(a) in subsection (1) for the words "by or on behalf of licensees" substitute "by any person",

(b) in subsection (2)(b) immediately after "licensees" insert " or any other person", and

(c) in subsection (c) immediately after "licensee" insert "or any other person".

16. In section 20 of the Law -

- (a) for the heading substitute -

"Authorised or registered collective investment scheme rules.",

- (b) in subsection (1) for the words "trustees and custodians" to the end substitute "the rights of investors in such schemes and, in the case of authorised and registered open-ended collective investment schemes, the functions of their designated trustees and custodians."

17. In section 23 of the Law -

- (a) for the heading substitute -

"Regulations limiting validity of licences, authorisations or registrations.", and

- (b) after the words "or authorisations" insert "or registrations".

18. In section 27 of the Law -

- (a) in subsection (2) -

- (i) in paragraph (a), delete the word "specified" and immediately after the words "time and place" insert "specified by the Commission or appointed person",

- (ii) for paragraph (b) substitute -

"(b) to furnish the Commission or an appointed person, on any occasion or at times or intervals specified by the Commission, or appointed person, with such information as the Commission or the appointed person may reasonably require about any matter specified by the Commission, or appointed person, relating to any controlled investment business, or to any offence or suspected offence under this Law, being, if the Commission or the appointed person so requires, information verified in such manner as the Commission or appointed person may reasonably specify.",

(b) for subsection (7) substitute -

"(7) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

(a) in proceedings for an offence under section 38 or 38A, or

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

(c) after subsection (12) insert the following subsection -

"(13) The provisions of this section apply in relation to a

former licensee as they apply in relation to a licensee, but only, unless the Commission directs otherwise in any particular case, for a period of six years immediately after the date on which the former licensee ceased to be a licensee."

19. After section 27D of the Law^d insert the following section -

"Investigations by inspectors.

27E. (1) The Commission may, in relation to any licensee, if it considers it desirable to do so -

- (a) in the interests of investors, or
- (b) for the protection of the public or of the reputation of the Bailiwick as a financial centre,

appoint one or more competent persons (hereinafter called "**inspectors**") to investigate and report to the Commission on -

- (i) the nature, conduct or state of the business of the licensee or any particular aspect of that business, or
- (ii) the ownership or control of the licensee,

and the Commission shall give notice in writing of the appointment to the licensee concerned.

^d Section 27D was inserted by Order in Council No. XXXII of 2003.

(2) An inspector may also, if he thinks it necessary to do so for the purposes of his investigation, subject to the provisions of subsection (3), investigate the business of any company-

- (a) which is or has at any relevant time been an associated company of the licensee under investigation (where the licensee is a company), or
- (b) of which a partner in the licensee under investigation is or has at any relevant time been a controller (where the licensee is a partnership).

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

(4) A licensee or company being investigated under subsection (1) or (2) and any person who is or has been a director, controller, manager, partner, employee, agent, banker, auditor, advocate or other legal adviser of a licensee or company being so investigated, or who has been appointed to make a report in respect of such a licensee or company under section 3(3)(a), or who is or has been a significant shareholder in relation to such a licensee or company -

- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to

that licensee or company, and the inspector may take copies of or extracts from any documents produced to him under this paragraph,

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

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

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

(6) A person who without reasonable excuse -

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

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

is guilty of an offence and is liable -

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

(7) A statement made by a person in response to a requirement imposed by or under this section may not be used in evidence against him except -

- (a) in proceedings for an offence under subsection (6) or section 38 or 38A, or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of any client.

(9) Where a person claims a lien on a document its production under this section is without prejudice to his lien.

(10) A requirement imposed by or under this section has effect notwithstanding any obligation as to confidentiality or other restriction

on the disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(11) Subject to the provisions of subsection (12), the costs, fees and expenses of an investigation and report under subsection (1) or (2) shall be met by the licensee the business, ownership or control of which is being investigated under subsection (1), and those costs, fees and expenses may, subject as aforesaid, be recovered by the Commission from that licensee as a civil debt.

(12) No sum in respect of the costs, fees and expenses of an investigation and report under subsection (1) or (2) may be recovered by the Commission from a licensee as a civil debt where the court is satisfied that -

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

(13) A notice under subsection (1) or (3) shall give particulars of the right of appeal conferred by section 36.

(14) The provisions of this section apply in relation to a former licensee as they apply in relation to a licensee, but only in connection with the business, ownership or control of the former licensee at a time when he held a licence."

20. Immediately before section 28 insert -

"Intervention, administration and winding up

Intervention and administration.

28AA. (1) The States may by Ordinance make provision enabling any court to make an order -

(a) authorising the Commission, or any other person appointed by the Commission, to intervene in, or administer, the business or affairs of any person or entity which carries on controlled investment business or which applies for a licence under section 3 or for an authorisation or registration under section 8, and

(b) prohibiting any such person or entity from -

(a) undertaking any business, or

(b) undertaking any business, except in accordance such conditions as the court may order.

(2) Such an Ordinance as is mentioned in subsection (1) may in particular -

(a) empower any court to make an order enabling

the Commission, or any person appointed by the Commission to intervene in, or administer, the business or affairs of any person or entity -

(i) generally, or in relation to such business or affairs of the person or entity, and

(ii) for such period,

as are specified in the order,

(b) empower the Commission, or any person appointed by the Commission, to apply for such an order,

(c) specify the grounds upon which applications may be made,

(d) make provision relating to appeals,

(e) make provision relating to the powers that may be exercised by any person under such an order including, without limitation, powers -

(i) to ensure that the assets of a person or entity are properly managed,

(ii) to restrict the activities of any person or entity,

- (iii) to require any person or entity to take specific actions, and
- (iv) to disclose information about any person or entity, and
- (f) modify or supplement any enactment or rule of law appertaining to the management, control and ownership of any person or entity including, for the avoidance of doubt, its assets and liabilities."

21. After section 29(1)(c) of the Law insert the following paragraph -

"(cc) a person, other than a Bailiwick body or an individual ordinarily resident in the Bailiwick, where that activity consists of the promotion of controlled investments to licensees or to any person licensed to carry on business under any of the regulatory laws referred to in paragraphs (a) to (d) of the definition of "**regulatory Laws**" in section 44, and that person -

- (i) carries on the activity in or from within the Bailiwick in a manner in which he is permitted to carry it on in or from within, and under the law of, a designated country or territory which, in the opinion of the Committee, affords

in relation to activities of that description adequate protection to investors,

- (ii) has his main place of business in that country or territory and does not carry on any restricted activity from a permanent place of business in the Bailiwick,
- (iii) is recognised as a national of that country or territory by its law, and
- (iv) has given written notice to the Commission of the date from which he intends to carry on that activity in or from within the Bailiwick, or".

22. In section 34B of the Law^e -

- (a) in paragraph (j) after the words "section 3(3)(a)" insert "or appointed under section 27E", and
- (b) in paragraph (k) after the words "section 27" insert ", 27E".

23. After section 35(1)(f) of the Law insert the following paragraphs -

"(ff) under section 27 to impose a requirement under

^e Section 34B was inserted by Order in Council No. XXXII of 2003.

subsection (2), (4) or (5) of that section (including, for the avoidance of doubt, a requirement imposed under those subsections pursuant to the operation of section 41I),

(gg) under section 27E, to serve a notice under subsection (1) or (3) of that section,".

24. For sections 35(2) to (6) substitute the following subsections -

"(2) Before taking any decision mentioned in subsection (1) the Commission shall serve on the person concerned a notice in writing -

- (a) stating that the Commission is proposing to take the decision,
- (b) stating the grounds for the proposed decision,
- (c) setting out particulars of any condition or direction proposed to be imposed, varied or rescinded,
- (d) stating that the person concerned may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed decision in such manner as the Commission may from time to time determine, and
- (e) giving particulars of the right of appeal which

would be exercisable under section 36 if the Commission were to take the proposed decision,

and "**the person concerned**" means the person by whom the right of appeal would be so exercisable.

(3) Where -

- (a) a ground for the proposed decision is that any criterion of Schedule 4 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person, or
- (b) any proposed condition or direction requires the removal or replacement of any person as a director, controller, partner, manager, employee, general representative, auditor or actuary,

the Commission shall serve upon that person a copy of the notice mentioned in subsection (2) (which copy may omit any matter which does not relate to him) giving particulars of the right of appeal which would be exercisable under section 36 if the Commission were to take the proposed decision.

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

(5) The period of 28 days mentioned in subsection (2)(d)

may be reduced in any case in which the Commission considers it necessary to do so in the interests of the public, the clients, investors or potential investors of the person concerned or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency then the procedure prescribed in this section may be dispensed with altogether.

(6) Nothing in subsection (2) or (3) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in the Bailiwick or elsewhere, or
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission declines under this subsection to disclose information which it considers relevant to the decision proposed or taken, the Commission must so inform the person concerned; and, in the event of an appeal under section 36, subsection (3) of that section shall apply."

25. In section 36 of the Law -

- (a) in subsection (1) for the words "it was ultra vires or was an unreasonable exercise of the powers of the Commission"

substitute -

- "(a) the decision was ultra vires or unreasonable in law,
- (b) a material error as to the facts has been made,
- (c) there was a material procedural error, or
- (d) there was some other error of law, including bad faith or lack of proportionality.",

(b) for subsections (4) and (5) substitute -

"(4) On an appeal under this section the Court may -

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

(5) On an appeal under this section against a decision described in section 35(1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition or direction in question, or the variation or rescission thereof, pending the determination of the appeal.", and

(c) subsection (6) is repealed.

26. After section 38(2)(b) of the Law insert the following paragraph -

"(bb) in connection with an application for registration declaring that a collective investment scheme is a registered collective investment scheme, or".

27. After section 41H insert the following sections -

"Assistance to relevant overseas authorities

Investigations etc. in support of relevant overseas authority.

41I. (1) Where a relevant overseas authority notifies the Commission that it requires assistance in connection with the investigation of market abuse -

(a) the Commission may exercise the investigative powers described in subsection (6) in relation to a person involved, where that person is a licensee, and

(b) the Commission, with the prior authority of a majority of its members, may exercise the investigative powers described in subsection (6) in relation to a person involved, where that person is not a licensee.

(2) In deciding whether or not to exercise its investigative powers the Commission may take into account in particular -

- (a) whether in the country or territory of the relevant overseas authority concerned, corresponding assistance would be given to the Commission,
- (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the Bailiwick or involves the assertion of a jurisdiction not recognised by the Bailiwick,
- (c) the seriousness of the case and its importance to persons in the Bailiwick, and
- (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Commission may decide that it will not exercise its investigative powers unless the relevant overseas authority undertakes to make such contribution towards the costs of the exercise as the Commission considers appropriate.

(4) If in the exercise of its investigative powers the Commission has appointed any person in response to a request from a relevant overseas authority it may direct that person to permit a representative of that overseas authority to attend, and take part in, any interview conducted for the purposes of the investigation.

(5) A direction under subsection (4) is not to be given unless the Commission is satisfied that any information obtained by a relevant overseas authority as a result of the interview will be subject to safeguards equivalent to those contained in sections 34A, 34B and 34C.

(6) The investigative powers are the powers that are exercisable in respect of a licensee, or a relevant person in relation to a licensee, in the circumstances provided for under section 27; provided that any power arising or created under section 27 -

- (a) shall have effect, for the purposes of this section, as if references in that section to a licensee or a relevant person were references to a person involved, and
- (b) where appropriate for the purposes of this section, may be exercised by a majority of the members of the Commission.

(7) For the purposes of this section -

- (a) a "**person involved**" is a person -
 - (i) whom a relevant overseas authority reasonably suspects is, or has been, involved, or
 - (ii) who, as a result of enquiries made, or information received, during the course of any investigation under this section,

appears to the Commission or the overseas authority to be involved, or have been involved,

in market abuse, whether knowingly or otherwise,

- (b) for the avoidance of doubt, "**market abuse**" includes the offence of insider dealing under the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996.

Financial penalties and offences

Powers of Royal Court to impose financial penalty for non-compliance.

41J. (1) If a person ("**the defaulter**") fails to comply with a requirement imposed on him pursuant to the exercise of the investigative powers under section 41I, the person imposing the requirement may certify that fact in writing to the Royal Court.

(2) If the Royal Court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement, it may order the defaulter to comply with the requirement in such manner and within such period as the Court thinks fit.

(3) If the defaulter fails without reasonable excuse to comply with an order made under subsection (2), the Royal Court may impose a financial penalty upon the defaulter (and in the case of a body corporate, any director or officer) -

- (a) of such amount, not exceeding £500,000, and
- (b) to be paid within such period,

as the Court thinks fit.

- (4) A financial penalty imposed under this section -
 - (a) is an obligation to pay the amount of the penalty to the States of Guernsey in accordance with the terms of the relevant order of the Royal Court, and
 - (b) may be recovered from the person liable to pay as a civil debt owed by that person to the States of Guernsey.

Offences.

41K. (1) A person who knows or suspects that an investigation is being or is likely to be conducted under section 41I is guilty of an offence if -

- (a) he falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation, or
- (b) he causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

(2) A person who, in purported compliance with a requirement imposed on him pursuant to the exercise of the investigative powers under section 41I -

- (a) provides information which he knows to be false or misleading in a material particular, or
- (b) recklessly provides information which is false or misleading in a material particular,

is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable -

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

Powers to investigate criminal offences

Powers of investigation.

41L. (1) The powers of Her Majesty's Procureur under this section shall be exercisable in any case in which it appears to him -

- (a) on reasonable grounds that there is a suspected offence involving market abuse, wherever committed, and
- (b) that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person.

(2) Her Majesty Procureur may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person whom he has reason to believe has relevant information to attend before Her Majesty's Procureur at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) Her Majesty's Procureur may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation or any documents of a specified class which appear to him so to relate: and -

- (a) if any such documents are produced, Her Majesty's Procureur may -
 - (i) take copies or extracts from them,

- (ii) require the person producing them to provide an explanation of any of them,
- (b) if any such documents are not produced, Her Majesty's Procureur may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) Where, on information on oath laid by Her Majesty's Procureur, the Bailiff is satisfied, in relation to any documents, that there are reasonable grounds for believing -

- (a) that -
 - (i) a person has failed to comply with an obligation under this section to produce them,
 - (ii) it is not practicable to serve a notice under subsection (3) in relation to them, or
 - (iii) the service of such a notice in relation to them might seriously prejudice the investigation, and
- (b) that they are on premises specified in the information,

he may issue such a warrant as is mentioned in subsection (5).

(5) The warrant referred to above is a warrant authorizing any officer of police -

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and
- (b) to take possession of any documents appearing to be documents of the description specified in the information or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(6) An officer of police executing a warrant issued under subsection (4) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the officer of police.

(7) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him -

- (a) on a prosecution for an offence under subsection (11), or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

(9) Her Majesty's Procureur may authorise any person to exercise on his behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(10) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

(11) A person who, in purported compliance with a requirement under this section -

- (a) makes a statement which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

(12) A person guilty of an offence under subsection (11) shall -

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

(13) Where any person -

- (a) knows or suspects that an investigation by the police or Her Majesty's Procureur into market abuse is being or is likely to be carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation,

he shall be guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(14) A person guilty of an offence under subsection (13) shall -

- (a) on conviction on indictment, be liable to imprisonment for a term not exceeding 7 years or to a fine or to both, and
- (b) on summary conviction, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both.

(15) In this section, "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

Disclosure.

41M. (1) Where any information is subject to an obligation of secrecy or confidentiality imposed by or under any enactment (including in an enactment passed after this Law) the obligation shall not have effect to prohibit the disclosure of that information to any person authorised by Her Majesty's Procureur, but any information disclosed under this subsection may only be disclosed by such a person for the purpose of an investigation, or a prosecution, in the Bailiwick or elsewhere.

(2) Without prejudice to his power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information to or by him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

(3) Subject to subsection (1) and to any provision of an

agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by Her Majesty's Procureur or any person duly authorised under section 41L(9) may be disclosed -

- (a) to any person or body for the purposes of any investigation of an offence or prosecution in the Bailiwick or elsewhere,
- (b) to any competent authority, or
- (c) to the Administrator of the States of Guernsey Income Tax Authority.

(4) The following are competent authorities for the purposes of subsection (3)(b) -

- (a) any person or body having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
- (b) any person having under the law of any country or territory outside the Bailiwick functions corresponding to any of the functions mentioned in subparagraph (a), and
- (c) any person appointed to investigate the affairs of a company in the Bailiwick or elsewhere.

Offences as to "tipping off".

41N. (1) A person is guilty of an offence if -

- (a) he knows or suspects that Her Majesty's Procureur is conducting an investigation, or proposing to conduct an investigation, using his powers under this Law, and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

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

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

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

(4) In proceedings against a person for an offence under

subsection (1), it is a defence to prove that he did not know or suspect that the investigation or proposed investigation was likely to be prejudiced.

(5) No person authorised to act under section 41L(10) shall be guilty of an offence under this section in respect of anything done by him in the course of his acting under the said authority.

(6) A person guilty of an offence under this section shall be liable-

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the uniform scale, or to both."

28. After section 42 of the Law insert the following section -

"Power of States to amend Law by Ordinance.

42A. (1) The States may by Ordinance amend this Law.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

(3) An Ordinance under this section may, for the avoidance of doubt -

- (a) create offences, and
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

(4) An Ordinance under this section does not have effect in Alderney or Sark unless approved by the States of Alderney or (as the case may be) by the Chief Pleas of Sark.

(5) For the purposes of subsection (4), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period -

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark."

29. In section 44 of the Law -

- (a) insert the following definitions at the appropriate places -

"closed-ended investment scheme" means a collective investment scheme under which the investors are not entitled under the terms of the scheme -

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

"inspector" means a person appointed by the Commission under section 27E(1),

"investment company" means a collective investment scheme under which the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading risk and giving its members the benefit of the results of the management of those funds,

"open-ended investment scheme" means a collective investment scheme under which the investors are entitled under the terms of the scheme –

- (a) to have their units redeemed or repurchased by, or out of funds provided by, the scheme, or
- (b) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

"registered collective investment scheme" means a collective investment scheme declared in a registration issued by the Commission under section 8 to be a registered collective investment scheme for the purposes of this Law, and **"registration"** and related expressions shall be construed accordingly,

"relevant overseas authority" means a body in another country or territory which carries out any similar function to the Commission,"

- (b) in the definition of **"authorised collective investment scheme"** after the words "and "authorisation"" insert "and related expressions",
- (c) the definition of **"open-ended investment company"** is repealed, and
- (d) in the definition of **"the Ordinary Court"** after the words "Ordinary Court" insert

"and for the purposes of this Law -

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto."

30. In Schedule 1 to the Law -

- (a) in paragraph 1(3) items (k) and (kk) are repealed,
- (b) in paragraph 1(4) the definitions of "**closed-ended unit trust**" and "**closed-ended limited partnership**" are repealed,
- (c) in paragraph 2(1)(a) the word "open-ended" is repealed,
- (d) for paragraph 2(1)(c) substitute -
 - "(c) without prejudice to the generality of item (a),
shares in an investment company,"
- (e) in paragraph 2(2) the definitions of "**closed-ended unit trust**" and "**closed-ended limited partnership**" and of "**closed-ended investment company**" are repealed.

31. In Schedule 3 to the Law -

- (a) for the heading substitute -
 - "REQUIREMENTS FOR AUTHORISED OR REGISTERED
COLLECTIVE INVESTMENT SCHEMES", and
- (b) in paragraphs 4 and 5 for the words "the scheme" substitute
"a scheme which is promoted or otherwise described as an
open-ended investment scheme".

32. For Schedule 4 to the Law substitute the Schedule 4 set out in the Schedule to this Law.

Repeal of Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959.

33. The Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959, as amended^f, is amended as follows -

(a) at the end of sections 3(1) and 4(1) and (7) insert -

"This subsection shall cease to have effect except to the extent that it applies to the incorporation of companies in the Bailiwick of Guernsey.",

(b) sections 4(4), 6, 7, 7A, 8(6) and 8A(1)(a) are repealed,

(c) in section 8A(1)(b) -

(i) the words ", unit trust scheme or person as the case may be," are repealed, and

(ii) after the word "authorised" insert the words " or registered",

(d) in sections 8A(2) after the word "authorised" insert the words "or registered", and

(e) in section 13 (definitions) -

^f Recueil d'Ordonnances Tome XII, p. 105, amended by Tome XV, p. 197, Tome XVI, p. 473, Tome XX, p. 412, Tome XXV, p. 80, and No's. IV and XXXIII of 2003. Also amended by Order in Council No. XII of 1995.

- (i) in the definition of "**registered**" the words "or unit",
 - (ii) in the definition of "**registered in the Bailiwick**" the words "or units" wherever appearing, and
 - (iii) the definitions of "**unit trust scheme**" and "**unit**",
- are repealed.

Citation.

34. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007.

Commencement.

35. (1) This section and sections 2(a), (d) and (g), 3, 19, 22 to 25, 27 and 34 shall come into force on the day on which this Law is registered on the Records of the Island of Guernsey.

(2) The remaining provisions of this Law shall come into force on the day appointed by Ordinance of the States, and different dates may be appointed for different provisions and for different purposes.

SCHEDULE

Section 32

SUBSTITUTION OF SCHEDULE 4 TO THE LAW

"Sections 4, 28A(3), 34E(1) and 35(6)

SCHEDULE 4

MINIMUM CRITERIA FOR LICENSING

Fit and proper persons.

1. (1) The applicant or licensee is a fit and proper person to hold a licence and every person who is, or is to be, a director, controller, partner or manager of the applicant or licensee, is a fit and proper person to hold that position.

In determining whether a person is a fit and proper person to hold a licence or a particular position, regard shall be had to -

- (a) his probity, competence, experience and soundness of judgment for fulfilling the responsibilities of a licensee or (as the case may be) of that position,
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities,
- (c) whether the interests of clients or investors (or potential clients or investors), the interests of any other persons or the reputation of the Bailiwick as a finance centre are, or are likely to be, in any way jeopardised by his holding a licence or that position,

- (d) his educational and professional qualifications, his membership of professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) his knowledge and understanding of the legal and professional obligations to be assumed or undertaken,
- (f) his policies, procedures and controls for the vetting of clients and his record of compliance with any provision contained in or made under -
 - (i) the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991,
 - (ii) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
 - (iii) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
 - (iv) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,
 - (v) the Disclosure (Bailiwick of Guernsey) Law, 2007,
 - (vi) the Transfer of Funds (Guernsey) Ordinance, 2007, the Transfer of Funds (Alderney) Ordinance, 2007 and the Transfer of Funds

(Sark) Ordinance, 2007,

- (vii) any legislation implementing European Community or United Nations sanctions and applicable in the Bailiwick, and
- (viii) any other enactment prescribed for the purposes hereof by regulation of the Commission, and
- (g) his policies, procedures and controls to comply with any rules, codes, guidance, principles and instructions referred to in paragraph 2(2).

(2) Without prejudice to the generality of subparagraph (1), regard may be had to the previous conduct and activities of the person in question and, in particular, to any evidence that he has -

- (a) committed any offence, and in particular any offence involving fraud or other dishonesty or involving violence,
- (b) contravened any provision contained in or made under-
 - (i) this Law,
 - (ii) the regulatory Laws,
 - (iii) any enactment relating to money laundering or

terrorist financing (including, for the avoidance of doubt, rules, instructions and guidance issued by the Commission in relation thereto),
or

(iv) any other enactment appearing to the Commission to be designed for protecting members of the public against financial loss due to -

(A) dishonesty, incompetence or malpractice by persons concerned in the provision of regulated activities (within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000), banking, insurance, investment or other financial services, or

(B) the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent (including persons who have been declared in a state of "désastre"),

(c) engaged in any business practices (whether unlawful or not) -

(i) appearing to the Commission to be deceitful or

oppressive or otherwise improper, or

(ii) which otherwise reflect discredit on his method of conducting business or his suitability to carry on business regulated by this Law, or

(d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

(3) For the purposes of subparagraph (2) and for the avoidance of doubt -

(a) "**conduct and activities**" includes any conduct, activity or omission in any jurisdiction,

(b) "**offence**" includes an offence under the law of another jurisdiction which would be an offence in the Bailiwick if the conduct, activity or omission constituting the offence occurred in the Bailiwick, and

(c) "**enactment**" includes any primary or secondary legislation of any jurisdiction in the British Islands or elsewhere.

Integrity and skill.

2. (1) The business of the applicant or licensee is or, in the case of a person who is not yet carrying on business regulated by this Law, will be carried on-

- (a) with prudence and integrity,
- (b) with professional skill appropriate to the nature and scale of his activities, and
- (c) in a manner which will not tend to bring the Bailiwick into disrepute as an international finance centre.

(2) In conducting his business the applicant or licensee shall at all times act in accordance with the following documents issued by the Commission -

- (a) the Principles of Conduct of Finance Business,
- (b) any rules, codes, guidance, principles and instructions issued from time to time under this Law and any other enactment as may be applicable to him.

Business to be directed by at least two individuals.

3. (1) At least two individuals, who are -

- (a) of appropriate standing and experience, and
- (b) sufficiently independent of each other,

shall effectively direct the business.

(2) For the purposes of subparagraph (1), an individual is sufficiently independent of another where, in the opinion of the Commission, that

individual would not be unduly influenced by that other individual.

Composition of board of directors.

4. Where the applicant or licensee is a company, the board of directors shall include such number of –

- (a) directors with executive responsibility for the management of the business, and
- (b) directors without executive responsibility for the management of the business,

as the Commission considers appropriate having regard to the circumstances of the company and the nature and scale of its operations.

Business to be conducted in prudent manner.

5. (1) The applicant or licensee conducts or, in the case of a person who is not yet carrying on business regulated by this Law, will conduct his business in a prudent manner.

(2) Without prejudice to subparagraph (1) and subject to subparagraph (4), an applicant or licensee shall not be regarded as conducting his business in a prudent manner unless -

- (a) he maintains or, as the case may be, will maintain -
 - (i) a capital base, and
 - (ii) insurance cover,

of an amount which the Commission considers appropriate,

(b) he maintains or, as the case may be, will maintain adequate liquidity, having regard to -

(i) the relationship between his liquid assets and his actual and contingent liabilities,

(ii) the times at which those liabilities will or may fall due and his assets will mature,

(iii) the nature and scale of his operations,

(iv) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group, so far as capable of affecting the company, and

(v) any other factors appearing to the Commission to be relevant,

(c) he makes or, as the case may be, will make adequate provision for -

(i) depreciation or diminution in the value of his assets (including provision for bad or doubtful debts),

- (ii) liabilities which will or may fall to be discharged by him, and
- (iii) losses which he will or may incur,
- (d) he maintains or, as the case may be, will maintain -
 - (i) adequate accounting and other records of his business, and
 - (ii) adequate systems of control of his business and records.

(3) Without prejudice to the generality of subparagraphs (1) and (2), in determining whether an applicant or licensee is to be regarded as conducting its business in a prudent manner the Commission shall also have regard to the following -

- (a) whether the applicant or licensee has staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties,
- (b) the systems of control and record keeping of the applicant or licensee for business undertaken or contemplated and the provision made by him for the proper maintenance and development of such systems,
- (c) the complaints history of the applicant or licensee, and
- (d) where the applicant or licensee is a company, whether

the structure or organisation of the group of which the applicant or licensee is a part, hinders effective supervision.

(4) For the purposes of -

(a) subparagraph (2)(a), an appropriate amount is -

(i) an amount commensurate with the nature and scale of his operations, and

(ii) an amount and nature sufficient to safeguard the interests of his clients and potential clients, having regard to -

(A) the nature and scale of his operations,

(B) the risks inherent in those operations and (where the person is a company) in the operations of any other company in the same group, so far as capable of affecting the company, and

(C) any other factors appearing to the Commission to be relevant,

(b) subparagraph (2)(b), in considering the liquid assets of an applicant or licensee the Commission may, to such extent as it thinks appropriate, take into account -

- (i) the assets of the applicant or licensee, and
 - (ii) the facilities which are available to him and which are capable of providing liquidity within a reasonable period, and
- (c) subparagraph 2(d) -
- (i) records and systems shall not be regarded as adequate unless they are such as to enable –
 - (A) the business of the applicant or licensee to be managed prudently, and
 - (B) the applicant or licensee to comply with the duties imposed on him by or under this Law or any enactment listed in paragraph 1(1)(f), and
 - (ii) where the applicant or licensee is a company, in determining whether those systems are adequate the Commission shall (without limitation) have regard to the functions and responsibilities in respect of them of any of the company's directors.

Information required by the Commission.

6. The applicant, licensee and any person who is, or is to be, a director, controller, partner or manager of the applicant or licensee, shall supply such information as the Commission may reasonably require for the purpose of assessing

compliance with the minimum criteria for licensing set out in this Schedule.

Power to make regulations.

7. The Committee may, after consultation with the Commission, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, make regulations amending the provisions of this Schedule."

PROJET DE LOI

ENTITLED

The Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007

THE STATES, in pursuance of their Resolution of the 25th day of July, 2007^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of Law of 1996.

1. (1) The Companies Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996^b is further amended as follows.

(2) After section 18 insert the following section -

"Power to amend Law by Ordinance.

18A. (1) The States may by Ordinance amend this Law.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances or orders (and vice versa).".

^a Article V of Billet d'État No. XIX of 2007.

^b Order in Council No. III of 1996, amended by No. XVI of 2001 and by Ordinance XXXIII of 2003.

- (3) For section 19 substitute the following section -

"Ordinances and orders."

- 19.** (1) An Ordinance or order under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or order, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

- (2) Any power conferred by this Law to make any Ordinance or order may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) An order under this Law shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting, the States resolve that the order be annulled, then it shall cease to have effect, but without prejudice to anything done under it or to the making of a new order."

Interpretation.

2. The Interpretation (Guernsey) Law 1948^c applies to the interpretation of this Law throughout the Bailiwick of Guernsey.

Citation.

3. This Law may be cited as the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007.

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

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007

THE STATES, in exercise of the powers conferred on them by section 53A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^a and all other powers enabling them in that behalf, hereby order:-

Amendments to Proceeds of Crime Law.

1. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended^b ("**the 1999 Law**") is further amended as follows.

2. In section 42(1)(c) of the 1999 Law after the words "regulation made under section 49 or 49A"^c insert "or under any rule, instruction or guidance of the Commission made under either of those sections".

3. (1) In the sections of the 1999 Law set out in subsection (2), after the words "regulations under section 49" insert "and any rules, instructions and guidance of the Commission under that section".

(2) The sections are 49B(1), 49B(2)(c), 49C(2)(b) and

^a Order in Council No. VIII of 1999; section 53A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007 (approved by the States on the 27th June, 2007).

^b Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; and G.S.I. No. 27 of 2002.

^c Those words were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

49C(2)(d)(i) ^d.

Extent.

4. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

5. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

Commencement.

6. This Ordinance shall come into force on the same day as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

^d Those sections were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

The Customs and Excise (General Provisions) (Amendment) Ordinance, 2007

THE STATES, in exercise of the powers conferred on them by sections 23B, 23C and 23J of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended^a and all other powers enabling them, hereby order:-

Amendment of 4th Schedule.

1. In the Fourth Schedule to the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended -

(a) before the definition of "**beer**", add the following definition -

"**approved trader**" means any person authorised by the Chief Officer of Customs and Excise in writing to supply gas oil, or petrol for the purpose of marine navigation,"

(b) after the definition of "**cider**", add the following definitions -

"**dyed oil**" means hydrocarbon oil that is dyed, marked or coloured, in accordance with the provisions of any Order made by the Board,

"**gas oil**" means heavy oil -

^a Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; No. XIII of 1991; No. X of 2004 (which inserted the Fourth Schedule); Ordinance No. XXXII of 2005 and No. LIV of 2006.

- (a) of which not more than 50% by volume distils at a temperature not exceeding 240°C, and
- (b) of which more than 50% by volume distils at a temperature not exceeding 340°C"

and for the avoidance of any doubt, includes diesel.

""**heavy oil**" means hydrocarbon oil, other than petrol,"

- (c) after the definition of "**made-wine**" add the following definition -

""**petrol**" means a hydrocarbon oil,

- (a) of which not less than 90% by volume distils at a temperature not exceeding 210 °C, or
- (b) which gives off an inflammable vapour at a temperature of less than 23 °C when tested in a manner approved by the Chief Officer of Customs and Excise,"
- (d) for the table in paragraph 2 ("*Hydrocarbon oil*") substitute the following -

a.	Petrol other than any fuel used for the purpose of air navigation (and subject to b.)	27p per litre
b.	Petrol used for the purpose of marine	13p per litre where

	navigation	supplied by an approved trader except where supplied to an approved trader in which case 27p per litre ^b
c.	Gas oil	27p per litre

Extent.

2. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation and commencement.

3. This Ordinance may be cited as the Customs and Excise (General Provisions) (Amendment) Ordinance, 2007 and shall come into force on the 1st January, 2008.

^b The circumstances in which the different rates may apply shall be specified by the Board by Order.

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2007

THE STATES, in pursuance of their Resolution of the 30th May, 2007^a and 28th September, 2007^b, and in exercise of the powers conferred upon them by sections 52 and 66 of the Housing (Control of Occupation) (Guernsey) Law, 1994^c, hereby order:-

Addition of dwellings to Part A of Housing Register.

1. The Authority may inscribe in Part A of the Housing Register the following dwellings –

New dwelling to be built within the enclos of La Ville en Bas, 47 Hauteville, St Peter Port	
The Flat, 2 Grange Place (known as Courtyard House), St Peter Port	Cadastre no. A114450000
Apartment 1, Alligande, Vega Apartments, Les Banques, St Peter Port	Cadastre no. A10492A001
Apartment 3, Alligande, Vega Apartments, Les Banques, St	Cadastre no. A10492A003

^a Article XVII of Billet d'État No. XIV of 2007.

^b Article XVII of Billet d'État No. XX of 2007.

^c Order in Council No. IV of 1994; amended by No. VI of 1998 and No. III of 2002.

Peter Port	
Apartment 5, Alligande, Vega Apartments, Les Banques, St Peter Port	Cadastre no. A10492A005
Apartment 1, Godfrey, Vega Apartments, Les Banques, St Peter Port	Cadastre no. A10492G001
Apartment 4, Godfrey, Vega Apartments, Les Banques, St Peter Port	Cadastre no. A10492G004
Apartment 7, Godfrey, Vega Apartments, Les Banques, St Peter Port	Cadastre no. A10492G007

Applications to be made within 6 months.

2. An application to the Authority to inscribe a dwelling described in section 1 in Part A of the Housing Register must be made within a period of 6 months immediately following the date of commencement of this Ordinance.

Licences to lapse if applications not made within 6 months.

3. Should the owner of a dwelling described in section 1 fail, within a period of 6 months immediately following the date of commencement of this Ordinance, to make application to the Authority to inscribe the dwelling in Part A of the Housing Register, any housing licence held in respect of the occupation of that dwelling and valid at the expiration of that period shall thereupon cease to be valid.

Interpretation.

4. Except where the context requires otherwise, expressions used in this Ordinance have the same meanings as in the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended.

Citation.

5. This Ordinance may be cited as the Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2007.

Commencement.

6. This Ordinance shall come into force on the 12th December, 2007.

The Elections Ordinance, 2007

THE STATES, in pursuance of their Resolution of the 29th June, 2007^a, and in exercise of the powers conferred on them by Articles 29(3), 34(11)(a), 39(2) and 44(1) of the Reform (Guernsey) Law, 1948, as amended^b, hereby order:-

Date of People's Deputies' Election

1. The date for the General Election of People's Deputies to be held in April 2008 shall be Wednesday 23rd April, 2008.

Closure of Entries to Electoral Roll

2. In relation to the General Election referred to in section 1, the Electoral Roll shall be closed on 1st February, 2008, and no entry to it shall be made or amended during the period beginning on that date and ending on the date of the election.

Electoral expenditure: People's Deputies

3. A candidate in an election for the office of People's Deputy may, during the period commencing on the day on which he delivers his nomination form to the Presiding Officer of the States and ending on the date of the election, expend money or give value in money's worth in respect of that election up to a maximum of £1,400.

^a Article XIV of Billet d'État No. XVI of 2007.

^b Ordres en Conseil Vol. XIII, p.288; Vol. XIV, p.407; Vol. XV, p.279; Vol. XVI, p.178; Vol. XVIII, p.275; Vol. XIX, p.84; Vol. XIX, p.140; Vol. XXII, p.122; Vol. XXIII, p.476; Vol. XXV, p.326; Vol. XXVI, p.255; Vol. XXIX, p.56; Vol. XXX, p.16; Vol. XXXI, p.164; Vol. XXXII, p.41; No. V of 1993; No. II of 1996; No. III of 1998; No. X of 1998; No. XIII of 2003; No. III of 2004; No. II of 2007; also amended by Ordinances XXXIII of 2003; III of 2004 and LI of 2006.

Hours of Polling in St Peter Port

4. At every election for the office of People's Deputy held in the Electoral Districts of St Peter Port South and St Peter Port North every polling station shall open at 08.00 hours and be kept open until 20.00 hours.

Electoral expenditure: Constables and Douzeniers

5. A candidate in an election for the office of Constable or Douzenier shall not, during the period commencing on the day on which he delivers his nomination form to the Returning Officer and ending on the date when the election in fact takes place, expend money or give value in money's worth in respect of that election in excess of the amount specified in the right hand column of the Schedule to this Ordinance in relation to the Electoral Districts specified in the left hand column of that Schedule.

Repeals

6. The Elections Ordinance, 2004^c is repealed.

Citation

7. This Ordinance may be cited as the Elections Ordinance, 2007.

Commencement

8. This Ordinance shall come into force on the 31st January, 2008.

^c Ordinance No. VI of 2004.

SCHEDULE

Section 5

Electoral Districts	Maximum amount of election expenditure
The Parish of St. Peter Port	£700
The Parishes of St. Sampson, the Vale, The Castel and St. Martin	£465
The Parishes of St. Saviour, St. Pierre du Bois and St. Andrew	£290
The Parishes of Torteval and the Forest	£175