

# **BILLET D'ÉTAT No. XX, 2012**

**26<sup>th</sup> SEPTEMBER 2012**

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# PROJET DE LOI

ENTITLED

## **The Sewerage (Guernsey) (Amendment) Law, 2012**

**THE STATES**, in pursuance of their Resolution of the 1st February, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### **Amendment of the 1974 Law.**

1. The Sewerage (Guernsey) Law, 1974, as amended<sup>b</sup>, is hereby amended as follows -

(a) in section 2(2), for the words from "notifying them of the Committee's proposal" to the end, substitute -

"-

(a) notifying them of the Committee's proposal to construct a public sewer,

(b) giving particulars of the right of appeal conferred by section 2A, and

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<sup>a</sup> Article VI of Billet d'État No. III of 2007.

<sup>b</sup> Ordres en Conseil, Vol. XXIV, p. 372; Ordinance No. XXXIII of 2003 - there are other amendments not relevant to this Law.

(c) notifying them of their right to claim compensation for damage in accordance with the provisions of section 21 of this Law in the event of the exercise by the Committee of its powers to construct such public sewer under the provisions of section 2(2).",

(b) immediately after section 2(2) insert the following additional subsection -

" (2A) A recommendation to the States for their approval under the provisions of subsection (1)(b) shall not be submitted until the expiration of the period specified in section 2A(2) or, where an appeal is instituted under section 2A, until the appeal has been determined by the Royal Court or withdrawn.", and

(c) immediately after section 2, insert the following section -

**"Appeal against notice.**

**2A.** (1) A person on whom notice is served pursuant to section 2(2) may appeal to the Royal Court ("the Court") against the decision of the Committee to propose the construction of the public sewer referred to in such notice on the grounds that -

(a) the decision was ultra vires, or there was some other error of law,

(b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was material error as to the facts or as to the procedure.

(2) An appeal under this section shall be instituted, within 21 days immediately following the date of the notice under section 2(2), in accordance with section 24.

(3) On an appeal under this section, the Court may-

- (a) dismiss the appeal, or
- (b) quash the Committee's decision to propose the construction of such public sewer. "

**Citation.**

2. This Law may be cited as the Sewerage (Guernsey) (Amendment) Law, 2012.

**Commencement.**

3. This Law shall come into force on the date of its registration on the records of the Island of Guernsey.

## **The Health and Safety at Work (General) (Guernsey) (Amendment) Ordinance, 2012**

**THE STATES**, in pursuance of their Resolution of the 7<sup>th</sup> March, 2012<sup>a</sup>, and in exercise of the powers conferred on them by sections 3(1), 5 and 6 of the Health and Safety at Work etc. (Guernsey) Law, 1979<sup>b</sup>, as amended, hereby order:-

### **Amendment of Ordinance of 1987.**

1. In sections 25(2) and (3)(a) of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987<sup>c</sup>, as amended, for "level 4" substitute "twice level 5".

### **Extent.**

2. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

### **Citation.**

3. This Ordinance may be cited as the Health and Safety at Work (General) (Guernsey) (Amendment) Ordinance, 2012.

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<sup>a</sup> Article X of Billet d'État No. V of 2012.

<sup>b</sup> Ordres en Conseil Vol. XXVII, p. 155; Vol. XXXIV, p. 586; Recueil d'Ordonnances Tome XXV, p. 328; Tome XXVII, p. 139; Tome XXIX, p. 406 and see G.S.I. No. 8 of 1994.

<sup>c</sup> Recueil d'Ordonnances Tome XXIV, p. 162; Tome XXV, p.328; Tome XXVII, p. 139; Tome XXIX, p. 406.

**Commencement.**

4. This Ordinance shall come into force on the 26<sup>th</sup> September, 2012.

## **The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2012**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> day of September, 2011<sup>a</sup>, and in exercise of the powers conferred on them by sections 289 and 297 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Commencement of Chapter VI of Part VI, and Part VII of, and Schedules 5 and 7 to, the Law.**

1. Sections 189 to 202 of, and Schedules 5, 6 and 7 to, the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the Law") shall come into force on 1<sup>st</sup> October 2012.

### **Commencement of certain repeals in Schedule 10 to the Law.**

2. Section 296 of the Law shall come into force on 1<sup>st</sup> October 2012 only to the extent necessary to give effect to the repeal of the following provisions listed in Schedule 10 to the Law -

- (a) Part VIII of the Merchant Shipping Act 1894<sup>c</sup>,
- (b) sections 2(1), 2(3) to (6), and 3 to 5 of the Merchant Shipping (Liability of Shipowners) Act 1900<sup>d</sup>,

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<sup>a</sup> Article XVII in Billet d'État No. XV of 2011.

<sup>b</sup> Order in Council No. VIII of 2004; amended by Recueil d'Ordonnances Tome XXIX, p. 406; and Order in Council No. XIII of 2010.

<sup>c</sup> An Act of Parliament (57 & 58 Vict. C. 60).

<sup>d</sup> An Act of Parliament (63 & 64 Vict. C. 32).

- (c) sections 1 to 3, and 8, of the Maritime Conventions Act 1911<sup>e</sup>,
- (d) the Merchant Shipping (Liability of Shipowners and Others) Act 1958 (Guernsey) Order 1964<sup>f</sup>,
- (e) the Merchant Shipping Act 1979 (Guernsey) Order 1980<sup>g</sup>, and
- (f) the Merchant Shipping (Liability of Shipowners and Others) (Guernsey) Order 1982<sup>h</sup>.

**Savings.**

3. For the avoidance of doubt, sections 1 and 2 do not affect -

- (a) any right, privilege, obligation or liability incurred under the provisions listed in section 2, or
- (b) any investigation or legal proceeding in respect of any such right, privilege, obligation or liability,

and any such investigation or legal proceeding may be instituted, continued or enforced as if this Ordinance had not been made.

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<sup>e</sup> An Act of Parliament (1 & 2 Geo. 5 c. 57).

<sup>f</sup> S.I. 1964/929 (see Ordres en Conseil Vol XIX, p. 241).

<sup>g</sup> S.I. 1980/569 (see Ordres en Conseil Vol. XXVII, p. 193).

<sup>h</sup> S.I. 1982/335 (see Ordres en Conseil Vol. XXVII, p. 421).



**Extent.**

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

**Citation.**

5. This Ordinance may be cited as the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2012.

## **The Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Bailiwick of Guernsey) Ordinance, 2012**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> day of September, 2011<sup>a</sup>, and in exercise of the powers conferred on them by section 194(3) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of the 2002 Law.**

1. The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the Law") is further amended as follows.

### **Claims excepted from limitation.**

2. In the text of the Convention on Limitation of Liability for Maritime Claims 1976 ("the Convention") as set out in Part I of Schedule 7 to the Law, in Chapter I, for paragraph (a) of Article 3 substitute –

"(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;"

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<sup>a</sup> Article XVII in Billet d'État No. XV of 2011.

<sup>b</sup> Order in Council No. VIII of 2004; amended by Recueil d'Ordonnances Tome XXIX, p. 406; and Order in Council No. XIII of 2010.

**Limits of Liability.**

3. In the text of the Convention as set out in Part I of Schedule 7 to the Law, in Chapter II –

(a) for paragraph 1 of Article 6 substitute –

"1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account,

for each ton from 30,001 to 70,000 tons, 600 Units of Account, and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account,

for each ton from 30,001 to 70,000 tons, 300 Units of Account, and

for each ton in excess of 70,000 tons, 200 Units of Account.", and

(b) for paragraph 1 of Article 7 substitute –

"1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.".

**Scope of application of Convention.**

4. In the text of the Convention as set out in Part I of Schedule 7 to the Law, in Article 15 –

(a) number the existing text 1, and

(b) at the end add the following paragraphs -

"2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

(a) according to the law of that State, ships intended for navigation on inland waterways;

(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

*3bis.* Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none."

**Reservations permitted under the Convention.**

5. In Part I of Schedule 7 add the following at the end -

"ARTICLE 18

*Reservations*

1. Any State may, at the time of signature, ratification,

acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
- (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention."

**Amendments to provisions which have effect in connection with the Convention.**

6. In Part II of Schedule 7 to the Act (provisions having effect in connection with the Convention) –

- (a) at the beginning of paragraph 2 insert "Subject to paragraph 6 below,";
- (b) in paragraph 4, for sub-paragraph (1) substitute –

"(1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of the first

Ordinance made by the States under section 190 of this Law shall be excluded from the Convention.",

(c) in paragraph 5, in sub-paragraph (1)(a) for "166,667" substitute "1,000,000" and in sub-paragraph (1)(b) for "83,333" substitute "500,000",

(d) in paragraph 6, for sub-paragraph (1) substitute -

"(1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if, in paragraph 1 of that article -

(a) after "thereof" there were inserted "in respect of each passenger, ",

(b) the words from "multiplied" onwards were omitted."

(e) for paragraph 13 substitute -

**"13.** An Order in Council made under and for the purposes of paragraph 13 of Part II of Schedule 7 to the Merchant Shipping Act 1995 and declaring that any State specified in the Order is a party to the Convention as amended by the 1996 Protocol shall, subject to the provisions of any subsequent Order made by virtue and for the purposes of that paragraph, be conclusive evidence that the State is a party to the Convention as amended by the 1996 Protocol."

**Amended text of Schedule 7.**

7. The Schedule to this Ordinance contains the text of Schedule 7 to the Law as amended by sections 2 to 6 of this Ordinance.

**Extent.**

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

**Citation.**

9. This Ordinance may be cited as the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Bailiwick of Guernsey) Ordinance, 2012.

**Commencement.**

10. This Ordinance shall come into force on the day appointed by an Order of the Public Services Department.



**SCHEDULE**

Section 7

**SCHEDULE 7 TO THE MERCHANT SHIPPING (BAILIWICK OF  
GUERNSEY) LAW, 2002 AS AMENDED**

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS  
1976

PART I  
TEXT OF CONVENTION

CHAPTER I. THE RIGHT OF LIMITATION

ARTICLE 1

*Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term "shipowner" shall mean the owner, charterer, manager or operator of a seagoing ship.

3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

## ARTICLE 2

### *Claims subject to limitation*

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

## ARTICLE 3

*Claims excepted from limitation*

The rules of this Convention shall not apply to:

- (a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law

only permitted to limit his liability to an amount greater than that provided for in Article 6.

#### ARTICLE 4

##### *Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

#### ARTICLE 5

##### *Counterclaims*

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

### CHAPTER II. LIMITS OF LIABILITY

#### ARTICLE 6

##### *The general limits*

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account,

for each ton from 30,001 to 70,000 tons, 600 Units of Account,

and for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account,

for each ton from 30,001 to 70,000 tons, 300 Units of Account,

and for each ton in excess of 70,000 tons, 200 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

## ARTICLE 7

### *The limit for passenger claims*

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

(a) under a contract of passenger carriage, or

- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

## ARTICLE 8

### *Unit of Account*

The Unit of Account referred to in Articles 6 and 7 is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

## ARTICLE 9

### *Aggregation of claims*

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or



- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

## ARTICLE 10

### *Limitation of liability without constitution of a limitation fund*

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

## CHAPTER III. THE LIMITATION FUND

## ARTICLE 11

*Constitution of the Fund*

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

## ARTICLE 12

*Distribution of the fund*

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of

Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

## ARTICLE 13

### *Bar to other actions*

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

#### ARTICLE 14

##### *Governing law*

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is

constituted.

#### CHAPTER IV. SCOPE OF APPLICATION

##### ARTICLE 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

- (a) according to the law of that State, ships intended for navigation on inland waterways;
- (b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

*3bis.* Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

## ARTICLE 18

*Reservations*

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
- (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

## PART II

## PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Right to limit liability*

2. Subject to paragraph 6 below, the right to limit liability under the

Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of article 1 shall be construed accordingly.

*Claims subject to limitation*

3. (1) Paragraph 1(d) of article 2 shall not apply unless provision has been made by an order of the Board for the setting up and management of a fund to be used for the making to harbour authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Board to be necessary or expedient.

*Claims excluded from limitation*

4. (1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of the first Ordinance made by the States under section 190 of this Law shall be excluded from the Convention.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 161 of this Law.

(3) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of either section 10 or 11 of the Nuclear Installations Act 1965 as extended to Guernsey.

*The general limits*

5. (1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if -

(a) paragraph 1 (a)(i) referred to 1,000,000 Units of Account, and

(b) paragraph 1 (b)(i) referred to 500,000 Units of Account.

(2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Board.

(3) Any order under this paragraph shall, so far as appears to the Board to be practicable, give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

*Limit for passenger claims*

6. (1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if, in paragraph 1 of that article -



- (a) after "thereof" there were inserted "in respect of each passenger", and
- (b) the words from "multiplied" onwards were omitted.

(2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents (Guernsey) Laws, 1900 and 1960.

#### *Units of Account*

7. (1) For the purpose of converting the amounts mentioned in articles 6 and 7 from special drawing rights into sterling one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for -

- (a) the relevant date under paragraph 1 of article 8; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury of the United Kingdom stating -

- (a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) for a particular date; or
- (b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date

which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

*Constitution of fund*

**8.** (1) In the event that the Secretary of State makes an order under paragraph 8(2) of Part II of Schedule 7 to the Merchant Shipping Act 1995, the Board may, in like terms to that order, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

*Distribution of fund*

**9.** No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

*Bar to other actions*

**10.** Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be

released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

*Meaning of "court"*

**11.** References in the Convention and the preceding provisions of this Part of this Schedule to the court are references –

- (a) in respect of matters arising in Alderney, to the Court of Alderney;
- (b) in relation to matters arising in Sark, to the Court of the Seneschal of Sark; or
- (c) in all other cases, to the Royal Court sitting as an Ordinary Court.

*Meaning of "ship"*

**12.** References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship.

*Meaning of "State Party"*

**13.** An Order in Council made under and for the purposes of paragraph 13 of Part II of Schedule 7 to the Merchant Shipping Act 1995 and declaring that any State specified in the Order is a party to the Convention as amended by the 1996 Protocol shall, subject to the provisions of any subsequent Order made by

virtue and for the purposes of that paragraph, be conclusive evidence that the State is a party to the Convention as amended by the 1996 Protocol.

## **The Mont Varouf School (Guernsey) Law, 2012 (Commencement) Ordinance, 2012**

**THE STATES**, in exercise of the powers conferred on them by section 8 of the Mont Varouf School (Guernsey) Law, 2012<sup>a</sup>, hereby order:-

### **Commencement of Law.**

1. The Mont Varouf School (Guernsey) Law, 2012 shall come into force on the 1<sup>st</sup> October, 2012.

### **Citation.**

2. This Ordinance may be cited as the Mont Varouf School (Guernsey) Law, 2012 (Commencement) Ordinance, 2012.

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<sup>a</sup> Approved by the States of Deliberation on the 6<sup>th</sup> March, 2012 and registered on the Records of the Island of Guernsey on the 27<sup>th</sup> July, 2012.

**The Sea Fish Licensing  
(Bailiwick of Guernsey) Law, 2012  
(Commencement) Ordinance, 2012**

**THE STATES**, in exercise of the powers conferred on them by section 25 of the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012<sup>a</sup>, hereby order:-

**Commencement of Law.**

1. The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 shall come into force on the 1<sup>st</sup> February, 2013.

**Citation.**

2. This Ordinance may be cited as the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 (Commencement) Ordinance, 2012.

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<sup>a</sup> Approved by the States of Deliberation on the 6<sup>th</sup> March, 2012, and the States of Alderney and the Chief Pleas of Sark on the 18<sup>th</sup> April, 2012. Registered on the Records of the Island of Guernsey on the 27<sup>th</sup> July, 2012.

**The Republic of Guinea–Bissau (Restrictive Measures)  
(Guernsey) Ordinance, 2012**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, hereby order:-

**Application and infringement of EU Regulation.**

1. (1) Council Regulation (EU) No. 377/2012 of the 3<sup>rd</sup> May, 2012<sup>c</sup> concerning restrictive measures in view of the situation in the Republic of Guinea-Bissau ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Guernsey in all respects as if Guernsey were a Member State.

(2) A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EU Regulation is guilty of an offence.

**Modification of Regulation.**

2. The EU Regulation in its application to Guernsey is modified as follows -

(a) Articles 1(e), 9, 12 and 13 shall not apply,

(b) references to the competent authorities of, or in, the

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

<sup>c</sup> OJ L 119, 4.5.2012, p.1.

Member States shall be construed as references to the Policy Council,

- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the authorising of the release of certain frozen funds or economic resources shall be construed as references to the issuing by the Policy Council of a licence to release those frozen funds or economic resources ("**a Policy Council licence**"),
- (e) references to the Member State concerned shall be construed as references to the Policy Council,
- (f) references to the Union shall be construed as including Guernsey,
- (g) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (h) references to the law of a Member State shall be construed as including the law of Guernsey.

### **Appeals against decisions of Policy Council.**

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, may appeal to the Ordinary Court against that decision on the grounds that -



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

(2) On an appeal under this section the Ordinary Court may -

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

(3) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

**Information.**

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information for the purpose of ensuring compliance with the EU Regulation.

**Failure to provide information or to co-operate.**

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EU Regulation is guilty of an offence.

**Furnishing of false information etc.**

6. (1) A person who in purported compliance with any article of the EU Regulation, or for the purposes of obtaining a Policy Council licence, intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

(2) Any Policy Council licence granted in connection with the application for which a false statement was made or a false document or false information or explanation was furnished is void as from the time it was granted.

**Failure to comply with terms of a Policy Council licence.**

7. Any person who, having acted under the authority of a Policy Council licence, fails to comply with any of the requirements or conditions to which the Policy Council licence is subject is guilty of an offence, unless -

- (a) the Policy Council licence had previously been modified by the Policy Council without that person's knowledge, and
- (b) the alleged failure to comply would not have been a failure

had the Policy Council licence not been so modified.

**Penalties and proceedings.**

8. (1) A person guilty of an offence under -

(a) section 1(2), 5, 6 or 7, or

(b) paragraph 2(b) or (c) of the Schedule,

is liable -

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

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

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, 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 body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Certain provisions of Customs and Excise Law applicable.**

9. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>d</sup> applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under customs or excise legislation.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under customs or excise legislation.

**Interpretation.**

10. (1) In this Ordinance, except where the context requires otherwise-

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

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

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

"**customs or excise legislation**" means those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

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<sup>d</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and Order in Council No. X of 2004.

1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

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

**"EU Regulation"** has the meaning given by section 1,

**"Guernsey"** means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

**"Judge of the Royal Court"** means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008<sup>e</sup>,

**"Ordinary Court"** means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,

**"Policy Council"** means the States of Guernsey Policy Council,

**"Policy Council licence"**: see section 2(d),

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

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

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<sup>e</sup> Order in Council No. XXII of 2008.

1989<sup>f</sup>,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

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

**Citation.**

11. This Ordinance may be cited as the Republic of Guinea-Bissau (Restrictive Measures) (Guernsey) Ordinance, 2012.

**Commencement.**

12. This Ordinance shall come into force on the 31<sup>st</sup> May, 2012.

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<sup>f</sup> Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

## SCHEDULE

Section 4

## INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production 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.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body

corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this item but such



consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

## **The Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2012**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948 hereby orders:-

### **Amendment of Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006.**

1. In section 2 of the Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006<sup>b</sup>, after paragraph (ea) insert -

"(eb) in Article 4b, for "the competent authorities in the Member States, as indicated in the websites listed in Annex II," substitute "the Policy Council,".

### **Citation.**

2. This Ordinance may be cited as the Belarus (Freezing of Funds) (Guernsey) (Amendment) Ordinance, 2012.

### **Commencement.**

3. This Ordinance shall come into force on the 31<sup>st</sup> May, 2012.

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

<sup>b</sup> Recueil d'Ordonnances Tome XXXI, p. 545; amended by Ordinances made by the States Legislation Select Committee on 30<sup>th</sup> June 2011 and 31<sup>st</sup> October 2011.