BILLET D'ÉTAT

XIX
2007

WEDNESDAY, 25th JULY, 2007

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE

Price £1.50

B I L L E T D'É T A T

TO THE MEMBERS OF THE STATES OF

THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY,** the **25th JULY, 2007,** immediately after the meeting already convened for that day, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
6 July 2007

PROJET DE LOI

entitled

THE TRUSTS (GUERNSEY) LAW, 2007

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled "The Trusts (Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

"THE CRIMINAL JUSTICE (AIDING AND ABETTING ETC.) (BAILIWICK OF GUERNSEY) LAW, 2007

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled "The Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE TRANSFER OF FUNDS (GUERNSEY) ORDINANCE, 2007

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled "The Transfer of Funds (Guernsey) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

POLICY COUNCIL

IMPROVED ENFORCEMENT POWERS FOR, AND RIGHTS OF APPEAL FROM DECISIONS OF, THE GUERNSEY FINANCIAL SERVICES COMMISSION

Executive summary

1. The Policy Council recommends that the States agrees to an extension of the enforcement powers available to the Guernsey Financial Services Commission ("the Commission"); a statutory basis for extended rights of appeal against decisions of the Commission to the Royal Court; and miscellaneous amendments to the regulatory and control of borrowing legislation.

2. Following a change in policy by the Commission to adopt, wherever possible, a more 'principles-based' approach to regulation, both the Policy Council and the Commission recognise that the Commission's current enforcement powers are no longer adequate, either in comparison with other regulatory bodies, or in the context of the change to a principles-based framework. In such a framework, more flexibility is given to financial services businesses and, consequently, they carry more responsibility for the way in which they make use of that flexibility. The potential increased risk which this could bring to customers of those businesses and the reputation of the Bailiwick needs to be mitigated by a more flexible range of sanctions and by some potentially greater sanctions.

3. In tandem with improved enforcement powers, the Policy Council proposes that the arrangements for the external and independent review of its regulatory decisions should be improved and put on a statutory basis. The Guernsey Financial Services Tribunal was established on a voluntary, interim basis to provide licensees and licence applicants with a full review before legislation could be put in place and, in the Policy Council's view, it is important to give the review arrangements statutory authority.

4. The Policy Council and the Commission does not wish to change the close and constructive working relationship with the Bailiwick's finance sector. The Policy Council does not envisage that the proposals in this States Report would affect that relationship, which it is committed to maintaining.

5 The proposals for improved enforcement powers and rights of appeal from decisions of the Commission have been subject of consultation with the finance sector.

Enforcement powers

Background to proposals

6. The Commission administers the following regulatory laws:

(a) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended ("the Financial Services Commission Law")

(b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended ("the Protection of Investors Law")

(c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended ("the Banking Supervision Law")

(d) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended ("the Regulation of Fiduciaries Law")

(e) the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended ("the Insurance Business Law")

(f) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended ("the Insurance Managers and Insurance Intermediaries Law").

7. The Commission's existing enforcement powers under the regulatory laws referred to in paragraph 6 include:

(a) the imposition of conditions on a licence or authorisation;

(b) the suspension of the licence or authorisation of a regulated institution;

(c) the issue of a direction to a regulated institution pending the revocation of a licence or expiry of a licence;

(d) the revocation of the licence or authorisation of a regulated institution;

(e) the prohibition of directors and other officers of regulated institutions from employment in specified positions within the regulated finance sector or from employment in the sector.

8. The use of any of the Commission's enforcement powers is subject to statutory and practical checks and balances (including an appeals process) to ensure that they are used appropriately. The statutory and non-statutory checks and balances include consideration by a committee comprising representatives of the regulatory Division(s) of the Commission which, on a day to day basis, regulate the entity in respect of which action is being considered; access to a committee of the Commission's senior management not previously involved with the case, then to an independent, non-statutory tribunal chaired by a Queen's Counsel and assisted by a panel of assessors with experience of Guernsey's finance sector; consideration by the Commissioners who make the final decision on cases and

an appeal to the Court. These processes are available in respect of any potential adverse decision taken by the Commission. Proposals for expanding the statutory rights of appeal available to persons aggrieved by the Commission's decisions are covered later in this Report and these would also apply to the proposed new enforcement powers.

9. The Commission has comparatively few enforcement powers compared with other regulatory bodies and it has few enforcement powers which do not involve direct action against the livelihood of a person or institution. The Commission's standard enforcement activity includes the imposition of licence conditions, which may include preventing a regulated person from taking on new customers until a failing is corrected, or requiring it to take other specified action.

10. The strongest powers – the ability to revoke licences and to prohibit people from employment in the finance sector – focus attention but the effect on peoples' livelihoods means that they should only be used in a narrow range of situations. The comparatively narrow range of enforcement powers currently available to the Commission means that significant and needless time at the institution and the Commission can be taken up with remedying obvious problems. A broader range of enforcement powers would enable the Commission to focus the attention of particular institutions and would reduce still further any risk to customers and the public – and, therefore, Guernsey's reputation.

11. Another factor relevant to considering the Commission's enforcement powers is the way in which it is moving to a principles-based approach to regulation. Recent guidance issued by the Commission has had the effect of passing more responsibility to industry, usually in return for a lighter regulatory environment. For example, the Commission has established a regulatory framework for Qualifying Investor Funds (QIFs). Until the introduction of this framework the Commission vetted the sponsors and the principal parties (such as investment advisers) of all Guernsey collective investment schemes. Under the framework, local fund administrators, rather than the Commission, conduct all the due diligence on the sponsors and principal parties of schemes in which only qualifying investors – as defined in guidance issued by the Commission – may invest. Significant responsibility, both for safeguarding the interests of investors and the reputation of the Bailiwick for high standards, lies with fund administrators when they are accepting new funds. The practical implications of the framework to the Commission are that greater resources are dedicated to monitoring of whether financial institutions are meeting these enhanced responsibilities. The Commission has to address instances where administrators might have failed to meet their enhanced responsibilities under the Qualifying Investor Fund framework.

12. It is likely that further responsibility will be transferred to regulated persons. For example:

(a) In the field of anti-money laundering it is envisaged that institutions will be required to adopt a risk-based approach. A reduced or simplified approach can be used where the regulated person determines there to be lower risk;

(b) Further responsibility for due diligence on the parties involved with collective investment funds is being transferred from the Commission to fund administrators in light of the conclusions of the working party established to consider the future of investment regulation. The concept of registered funds has recently been introduced for the closed-end fund sector as a matter of policy but it is intended to establish this approach in law for both closed and open-ended funds. Local fund administrators have – and will continue to have following the introduction of a legal framework for registration – the same responsibilities as those outlined for QIFs above.

13. The key to the success of the evolving nature of regulation is for regulated persons to be able to recognise and address their responsibilities and to react swiftly in the interests of customers, the public and the Bailiwick's reputation – and also in their own interests. The evolving risk-based regulatory environment, where flexibility and the concurrent responsibility in some areas are being passed to regulated persons, means that an increased range of enforcement powers is essential. It will enable the Commission to more easily take a direct, proportionate and dissuasive approach to particular situations to focus the attention of those regulated persons who are not meeting their responsibilities and to indicate the unacceptability of poor policies, procedures and controls which put customers, the public or the reputation of the Bailiwick at risk.

14. Following a review of enforcement actions taken during the last five years, the Policy Council is of the view that, had the statutory powers been available, the Commission may have considered levying financial penalties and/or issuing a public statement. The use of such powers may have had one or more of the following advantages:

(a) to send a signal that particular failings should not only be remedied in the individual case but also that they are unacceptable generally;

(b) to make the exercise of enforcement powers, and failings by regulated persons which lie behind that exercise, transparent to the public;

(c) to make regulated firms, which would have heard through the "grapevine" of cases at individual firms in the finance sector, but not of action taken by the Commission, aware that the Commission is fulfilling its statutory functions and taking remedial action in respect of these cases;

(d) to make other financial services businesses and their senior management aware of issues of which they should take account.

15. In considering the Commission's enforcement powers the Policy Council is mindful of the requirements of the 2003 Forty Recommendations issued by the Financial Action Task Force on Money Laundering (FATF). The Recommendations state that there should be effective, proportionate and dissuasive sanctions available to deal with the persons covered by the Recommendations who fail to comply with anti-money laundering or counter terrorist financing requirements. Persons covered by the Recommendations include financial services businesses in Guernsey subject to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2002 and the Commission's Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism.

16. The Policy Council is also aware of the enforcement powers available to the UK Financial Services Authority (FSA), the Jersey Financial Services Commission and the Isle of Man Financial Supervision Commission and, in particular, those powers the Commission does not possess, as follows:

(a) The FSA has the ability to make public statements about regulated persons, levy administrative penalties and levy financial penalties for breaches of the Financial Services and Markets Act. The FSA has discretion as to the level of the penalties which it may levy – no maximum penalty is stipulated.

(b) The Jersey Financial Services Commission has the power to make public statements about both regulated and unregulated persons. The Jersey States have approved changes to legislation to provide the Jersey Commission with powers to issue administrative fines where, for example, fees have not been paid or documents filed by the required date. This legislation is awaiting Privy Council approval.

(c) Isle of Man legislation permits the issue of public statements by the Isle of Man Financial Supervision Commission about regulated persons. Legislation has also been enacted which establishes the power to make regulations on the levying of both administrative penalties and punitive fines. Regulations came into force in November 2006 for levying administrative penalties.

(d) Since March 2004 the Isle of Man Insurance and Pensions Authority has had the power to impose administrative and punitive penalties of such amounts as the Supervisor of the Authority considers appropriate and to issue public statements.

17. In light of the foregoing, the Policy Council has considered whether it is appropriate to extend the regulatory legislation to provide the Commission with statutory power to:

(a) make public statements;

(b) impose administrative financial penalties;

(c) impose discretionary financial penalties for serious breaches of regulatory legislation or rules administered by the Commission.

Public statements

18. There are very limited circumstances in which the Commission is currently required or entitled to make public regulatory action which it has taken. Such circumstances are limited to the suspension or revocation of a licence or authorisation, or the prohibition of individuals from employment in the finance sector. The effect of this is threefold:

(a) From the point of view of customer protection, it can mean that the Commission is unable to alert customers to problems within a regulated person or to action the Commission has taken as a result of problems. This impedes both customer protection and market forces because it means that regulated persons are aware that their problems will not become public knowledge except where they lead to the suspension or revocation of a licence. Even in an extreme case such as revocation, the statutory confidentiality provisions which apply to the Commission make it difficult to publicise anything beyond the simple fact that the licence/authorisation has been revoked.

(b) The Commission's inability to make public statements can make it appear as though it is taking no action and is therefore ineffective, whereas the reality is that the Commission is taking action but is unable to publicise the facts. This is important from the perspective of both the public and of regulated institutions. With regard to the latter, in the comparatively small community of Guernsey's finance sector, institutions sometimes do find out about the existence of problems at other regulated entities but they do not see that any action is taken by the Commission to remedy those problems.

(c) The revocation of a licence is a last resort, to be used only in the most serious of cases, as it can destroy peoples' livelihoods. In cases where the "nuclear" options of revocation or the prohibition of individuals from employment in the finance sector are not appropriate, the Commission is unable to publish details of regulatory problems and action taken.

19. The Policy Council and the Commission consider that the ability for the Commission to issue public statements about failings by regulated persons and individuals employed by regulated entities (including directors)) is therefore desirable. The power would need to be used sparingly, where there have been major contraventions of rules or legislation and where publication would be in the interests of the public or customers. Care would need to be taken to balance the public interest in making the statement against any serious adverse commercial consequences which may impact on the licensee if the statement is made. The effects of public statements in a small community would also need to be borne in mind. Even if the power to issue public statements is used sparingly, it is likely that the introduction of such a power would lead to a cultural change within regulated persons as they would no longer be able to rely on their regulatory problems remaining behind closed doors.

20. The power to make public statements about failings by regulated persons and individuals can:

    (a) focus the attention of regulated persons;

    (b) clearly demonstrate to both the public and regulated persons that the Commission is aware of, and taking action in response to, problems at regulated persons;

    (c) provide clear messages about the unacceptability of particular failings; and

    (d) ensure that the Commission is seen to be active and effective.

    Clearly, except in the most extreme cases where it is necessary to prevent customers or the public from suffering loss, the Commission would need to discuss (although not necessarily agree) the contents of a public statement with the persons named in it before issuing it.

21. Any decision to issue a public statement, together with its contents, would need to follow the Commission's formal procedures for taking adverse decisions. A regulated person and any employee named in the statement must also be able to challenge the Commission's intention to make a public statement or the contents of a statement and, except in the extreme cases referred to in paragraph 20, this challenge should be considered prior to the issue of that statement.

22. The means for this challenge are included under the proposed changes later in this Report to expand the statutory rights of appeal available to persons aggrieved by Commission decisions – the Commission should have the power to issue public statements when, but not before, these changes take effect.

23. The Policy Council considers that it would not be appropriate for appeals to the

Royal Court against a Commission decision to make a public statement to be heard in public.

24. In the extreme cases referred to in paragraph 20, where it is necessary for the Commission to issue a public statement without prior discussion of its contents with the persons named in it, the challenge would be made after the issue of a statement. For such cases the Commission's internal procedures would need to include a requirement to weigh particularly carefully the interests of the regulated person and/or employee compared with the rights of customers and the public. In these extreme cases, it is recommended that the Commission should be obliged to publicise successful appeals in a similar public statement, where the appellant so requests.

Administrative financial penalties

25. The objective of administrative financial penalties is to encourage timely compliance with filing requirements and save staff time – the primary purpose of these proposed penalties is not to raise revenue. The penalties should be strictly administrative in nature, reflecting the time spent by executives in following up outstanding items such as the late filing of financial statements, the late filing of prudential, regulatory or statistical returns or notifications, or the late payment of fees. For administrative penalties to achieve their objective of ensuring timely filings and saving staff time, there should be no scope for waiving them. Any exercise of discretion would need to be subject to detailed procedures and criteria and a right of appeal – these would create more work and, potentially, fresh areas of contention.

26. The benefit of imposing administrative penalties is that it focuses the attention of regulated persons on what information or fee is required and when it is required by. At present, there is no practical sanction against regulated persons who are not timely in filing financial statements, returns or notifications, or who pay fees late. The regulatory Divisions of the Commission normally take the view that, in these cases of administrative failings, it would not be useful to impose conditions on a licence or proportionate to use the stronger enforcement measures.

27. The Commission has reviewed whether there are any issues arising from the finance sector's submission of information to it. The timeliness of the provision of financial statements, returns and fees has improved in recent years and it is the view of the Commission that the level of compliance does not in itself currently justify the activation of powers to issue administrative penalties.

28. However, the Policy Council is aware that, if a framework providing for the ability to levy administrative penalties is not in place, Guernsey will be out of step with the expectations of the international regulatory community and would be ill-equipped to deal with any recurrence of past problems with routine filings.

29. The Policy Council therefore considers that Guernsey should introduce enabling legislation which would allow with the agreement of the relevant political committees in Alderney and Sark the making of regulations for a regime of administrative penalties if it ever became appropriate to apply such penalties. This would allow the Island to confirm internationally that it has a regime appropriate for Guernsey, that legislation is in place to encourage regulated financial services businesses to have a responsible relationship with the Commission and that the political and regulatory authorities can activate a regime comparatively quickly if circumstances were to change.

Discretionary financial penalties

30. Discretionary financial penalties are imposed after consideration of the particular facts and can be significant in amount. The aim of these penalties is to punish regulated persons for serious breaches of regulatory rules or legislation and to be a deterrent to other firms from committing such breaches. In order to have a deterrent effect it is usually considered that penalties would need to be significant and their imposition normally published.

31. In order for the possibility of a discretionary financial penalty to be considered by the Commission in any case, a regulated person must first have breached the minimum criteria for licensing, or another legal or enforceable regulatory requirement such as a breach of enforceable rules issued by the Commission. A breach of a code of practice or guidance should not of itself lead to a penalty as codes of practice and guidance do not usually have the status of enforceable requirements.

32. The Policy Council considers that the Commission should have the ability to impose discretionary financial penalties against regulated persons and individuals employed by regulated entities in order to allow the Commission, in future, to respond proportionately to licensees' conduct which does not justify closing down a business or removing an individual's livelihood but nevertheless requires firm regulatory action to show that the conduct is not acceptable. Importantly, penalties could be used to reprimand a regulated person which has corrected a failing but where the unacceptability of the failing means that the application of another enforcement power, such as the imposition of a condition, is not appropriate. In order for fining powers to be proportionate and dissuasive in the Guernsey context, the Policy Council, having consulted with the Commission, consider that the maximum penalty should be £200,000, that the Commission should have discretion to set the level of a penalty up to that maximum penalty, and that the name of the fined regulated person or employee should be disclosed save in exceptional cases. The Policy Council also recommends that it should be possible to amend the amount of the maximum penalty by Ordinance.

33. The Policy Council proposes that the following factors should be taken into account when considering the level of a penalty:

(a) whether or not the failing was brought to the attention of the Commission by the regulated person;

(b) the seriousness of the failing (for example, the materiality and the impact of the failing);

(c) whether or not the failing was inadvertent;

(d) what efforts have been made to correct the failing and to prevent its recurrence;

(e) the financial consequences of the penalty to the regulated person and third parties, including customers and creditors;

(f) other penalties imposed by the Commission, so that decisions taken by the Commission are consistent and proportionate.

34. Whilst penalties would primarily be punitive in nature, the Commission anticipates that the placing in the public domain of information about the penalty, the identity of the person paying it and the problem leading to the penalty would have the necessary deterrent effect.

35. As indicated in paragraph 7 the Commission has the ability to prohibit directors and other officers of regulated institutions from occupying positions within the regulated finance sector. This is a significant and severe power since it may have the effect of taking away an individual's livelihood. It does not provide the flexibility of a financial penalty which may be adjusted to be more proportionate to the conduct and circumstances of the individual and the business concerned. Therefore the Policy Council considers that the Commission's fining powers should permit the imposition of penalties on individuals employed, or formerly employed, by licensed firms.

36. The safeguards identified in paragraphs 8 and 21 to 23 would apply to the issue of discretionary financial penalties and include the right of appeal prior to the imposition of a penalty. In addition, the structure of a framework for levying discretionary penalties would need to contain transparent procedures for ensuring that the Commission would not be perceived in any way as using its fining powers for revenue-raising purposes. The Policy Council therefore considers it important for the benefit of any discretionary financial penalty to be returned to the sector or sectors in which the fined person operates. Penalties received would be maintained in a segregated account and set against the fee levels payable by regulated persons in the sector in the following year.

Improved rights of appeal from decisions of the Commission

Background to proposals

37. The European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") contains a number of Articles which guarantee basic human rights and freedoms. These include the right under Article 6(1) of the Convention to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law to determine a person's civil rights and obligations. Those civil rights include, under Article 1 of the First Protocol, the right to use the goodwill of a lawful business free from unwarranted interference.

38. In the Bailiwick, the Convention is incorporated into domestic legislation by the Human Rights (Bailiwick of Guernsey) Law, 2000 ("the Law"), which came into force on 1 September 2006.

39. Under section 6 of the Law, it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The term "public authority" includes a court or tribunal and any person discharging functions of a public nature. The Policy Council considers that, when exercising the functions described in this Report, the Commission is a public authority for the purposes of the Law and is therefore obliged to act in a manner compatible with Convention rights in respect of those functions.

40. The Commission was established with both general and statutory functions by the Financial Services Commission Law. The general functions include the taking of "*such steps as the Commission considers necessary or expedient for the development and effective supervision of finance business in the Bailiwick*". The Commission's statutory functions include the regulation and supervision of financial services businesses under the Laws listed in paragraph 6 above.

41. Pursuant to those regulatory Laws, the Commission licenses a large number of diverse financial services businesses throughout the Bailiwick.

42. Before the incorporation of the Convention into Guernsey's domestic law, the Commission reviewed its policies and procedures to try to ensure that it acts in a manner compatible with Convention rights.

43. The Policy Council considers that the rights of appeal open to licensees and other persons affected by decisions of the Commission should be broadened to ensure that there is no reasonable doubt as to their Convention compatibility. The current grounds for appeal are that the Commission's decision was ultra vires (i.e. was made outside its powers) or was an unreasonable exercise of its

powers, rather than appeals necessarily involving a full review of the merits of the Commission's decision.

44. The Policy Council is of the opinion that, where a right of appeal lies against a decision of the Commission, the review process should be broadened to ensure that aggrieved persons can have the Royal Court conduct a full review of the Commission's decision, rather than a more limited review of whether the decision was ultra vires or an unreasonable exercise of the Commission's powers.

45. In order to comply with Convention rights pending the making of the legislative changes proposed in this Report, the Commission has since 2002 arranged for a non-statutory but independent tribunal, the Guernsey Financial Services Tribunal, to be available to review its adverse decisions. This system has operated on a voluntary basis, at the option of the person aggrieved by an adverse decision proposed by the Commission. Where the aggrieved person has taken up that option, the Tribunal has conducted a full review of the Commission's proposed decision and the Commissioners have considered the Tribunal's opinion before making a final decision.

46. Although voluntary, this system has worked well and the fairness and thoroughness of the Tribunal's review has been appreciated by both applicants and the Commission. In establishing the Tribunal, the Commission was fortunate to secure the services of Mr Michael Blair QC. Mr Blair is a senior financial services barrister practicing in London, and was formerly Private Secretary to two Lord Chancellors and General Counsel to the Financial Services Authority. Mr Blair's Chairmanship of the Tribunal, on which he has sat with two lay members appointed for their experience of finance business in the Bailiwick, has ensured a full and impartial review of the Commission decisions which have been referred to the Tribunal.

47. Experience of the reviews conducted by the Tribunal has shown that they have required detailed and specialist knowledge of the type of financial services business in issue. For that reason, Mr Blair as Chairman of the Tribunal has been assisted by two lay assessors with the relevant experience in each case. The Policy Council and the Commission are very grateful for the time and effort Mr Blair and the lay assessors have put into their consideration of the cases referred to them.

Proposed nature of appeal rights

48. It has always been clear that the review arrangements needed to be given a statutory basis and one option which has been considered would be to create a statutory Financial Services Tribunal to operate separately from the Royal Court. However, such a free-standing Tribunal would need its own infrastructure and staff and these would have to be funded, either by the finance sector or by taxpayers as a whole.

49. A more straightforward step would be for decisions of the Commission to be reviewed by the Royal Court, with some of the features of the Tribunal incorporated into the Royal Court's jurisdiction for this purpose. This could provide persons aggrieved by decisions of the Commission with the type of full review currently undertaken by the non-statutory Tribunal without creating an additional statutory body and the need for an infrastructure outside that of the Royal Court. The Policy Council envisages that the Bailiff would sit with two lay assessors, selected by him from a panel appointed by him for their experience in relevant areas of financial services business. Whilst the Bailiff would be the sole judge of issues of law, he would be advised by the lay assessors on factual matters. The Bailiff would sit alone where no factual issues were engaged for advice or determination. It would also be possible, if appropriate in particular cases, for a Lieutenant Bailiff to be appointed to hear particular cases.

Proposed improvements to extent of appeal rights, protections and consistency

50. The improvement of rights of appeal will require the amendment of provisions of the regulatory Laws listed in paragraph 6 above. The appealable decisions of the Commission should cover matters such as:

(a) the refusal to grant licences/authorisations to applicants;

(b) the imposition of conditions on licences/authorisations;

(c) the suspension or revocation of licences/authorisations;

(d) the appointment of inspectors to a licensee's business;

(e) the issue of directions;

(f) the refusal of consent to use certain terms such as "bank", "insurance" and "trustee";

(g) the refusal to approve a controller of a licensee;

(h) the issue of prohibition orders against individuals from carrying out one or more functions in the finance sector;

(i) the issue of public statements about failings by regulated persons or individuals employed by regulated entities;

(j) the imposition of discretionary financial penalties against regulated persons or individuals employed by regulated entities.

Following the proposed changes to the appeal process, the Commission will continue to decide all such matters, but in disputed cases that decision will be subject to review by the Royal Court. If the Royal Court disagrees with the Commission's decision, it will be able to quash the decision and remit the matter to the Commission with a direction to reconsider the decision.

51. With regard to the payment of costs, it is proposed that the legislation introducing the new Royal Court review procedure will specify that the Court should decide the allocation of costs for each case between the parties involved with an appeal.

Miscellaneous amendments to the regulatory and control of borrowing legislation

52. Further changes are desirable to some of the regulatory legislation at this stage, in particular the Banking Supervision and the Protection of Investors Laws so that they are consistent with the regulatory legislation made since these Laws came into force. The following amendments are proposed:

(a) The Banking Supervision and the Protection of Investors Laws

(i) the amendment of the existing provisions on statements made under compulsion so that persons making such statements to the Commission can only be prosecuted for making false statements, rather than on the substance of the statement. The provision should include former licensees as well as current licensees for a period of 6 years from the date of ceasing to be a licensee;

(ii) the inclusion, by Ordinance under the existing section 21C of the Financial Services Commission Law, of a provision regarding on-site inspections – it is also proposed that this provision should be included in the Regulation of Fiduciaries Law.

(b) The Banking Supervision Law

(i) the inclusion of a provision for an appeal against the exercise of the power to obtain information and documents;

(ii) the inclusion of an appeal where the Commission has appointed an inspector to investigate a licensee or where the inspector decides to investigate another institution;

(iii) the inclusion of an appeal against the exercise of the Commission's power to compel the production of information or documents and/or attendance by individuals to answer questions in order for the Commission to investigate suspected offences;

(iv) the inclusion of a requirement to obtain a warrant from the Bailiff before any power to enter premises is exercised;

(v) the inclusion of an appeal against a restriction by the Commission on the sale of shares in a licensee;

(vi) the inclusion of an appeal against a direction by the Commission in respect of a misleading advertisement;

(vii) the inclusion of an appeal against a refusal by the Commission to approve a controller of a licensee who has become a controller in contravention of the provisions of the law or who has become a controller after the Commission had served a notice of objection to him. (The provision states that he should not become a controller unless he has notified the Commission of his intention to do so and the Commission has notified him it has no objection to him becoming a controller.)

(c) The Protection of Investors Law

(i) the alteration of the existing provision relating to appeals against a decision by the Commission to require the appellant to take, or to prohibit the appellant from taking, an action. This provision states that from the time of the institution of an appeal against the Commission's decision, that decision will not operate unless and until that decision is confirmed by the Court. It is proposed that this provision should be amended so that the decision remains in place unless and until the condition, direction or order imposed by the Commission is overturned, modified or suspended;

(ii) the alteration of the existing provisions on the verification by the Commission of information and documents it has received so that it is explicit that verification shall be carried out in such a manner as the Commission may reasonably specify;

(iii) the alteration of the existing provision that the Commission may impose, vary or revoke conditions on a licence to include the matters that the Commission may have regard to when considering whether to do so. These matters would be based on those in the Regulation of Fiduciaries Law and the two Insurance Laws;

(iv) amending the provisions on representations concerning decisions of the Commission so that they are based on those in the two Insurance Laws. Where the Commission gives notice of a potential adverse decision – thus giving a person an opportunity to make representations – the existing period of 28 days' notice in

the Protection of Investors Law could remain but, rather than being reduced to two days where the Commission considers it necessary, it could be reduced to any period in any case in which the Commission considers it necessary to do so in the interests of the public, clients, investors or potential investors or the reputation of the Bailiwick as a finance centre. If by reason of these interests the Commission considers that the decision in question needs to be taken immediately as a matter of urgency the notice period could be dispensed with altogether. Decisions taken by the Commission such as those specified in paragraph 50 of this States Report would still be subject to the Royal Court appeal process;

(v) to replace the provisions in the Protection of Investors Law on matters to which the Commission must have regard before granting a licence and the Schedule to that law on fitness and propriety with a new Schedule on minimum criteria for licensing based on the other regulatory laws. The Schedules on minimum criteria for licensing in these other laws can be modified by regulations. Separate to the recommendations in this report, the Commission has consulted with the finance sector on potential changes to the minimum criteria for licensing in these laws. The proposed changes include the removal of the need for the Commission to consider an institution's economic benefit to the Bailiwick as it is no longer appropriate as a regulatory consideration.

Proposed improvements in appeal rights relating to company law functions of the Commission

53. The consent of the Commission is required under various Ordinances relating to companies. For example, the Migration of Companies Ordinance, 1997, the Amalgamation of Companies Ordinance, 1997, the Protected Cell Companies Ordinance, 1997 and the Incorporated Cell Companies Ordinance, 2006 provide that the Commission's consent is required for certain companies to migrate to or from the Bailiwick, to amalgamate with other companies and to be formed as protected cell and incorporated cell companies respectively. Criteria for consideration should be included in companies legislation along the lines of sub-paragraphs (a) to (c) below, together with a statutory right of appeal against Commission decisions.

(a) the protection of the public interest, including the protection of the public, in the Bailiwick and elsewhere, against financial loss due to dishonesty, incompetence or malpractice;

(b) the countering of financial crime and the financing of terrorism in the Bailiwick and elsewhere;

(c) the protection and enhancement of the reputation of the Bailiwick as a financial centre.

Proposed repeal of unnecessary elements of COBO

54. As well as the Commission making decisions under regulatory legislation, certain individual officers of the Commission also act on behalf of the Policy Council in relation to the consideration and approval of applications for consent under the Bailiwick's Control of Borrowing Ordinances. These matters include the following:

(a) the raising of more than £500,000 in the Bailiwick in a period of twelve months by the issue of shares in a company, units in a unit trust scheme or interests in a limited partnership;

(b) the maintenance of a register of shares in respect of a non-Guernsey company;

(c) the borrowing of a sum of money greater than £500,000 in a period of twelve months;

(d) the circulation in the Bailiwick of an offer or sale of securities;

(e) the issue of founder shares in a Guernsey or Alderney company;

(f) the registration of a Guernsey limited partnership.

55. The Policy Council recommends that the opportunity should be taken now to repeal these elements of the Control of Borrowing Ordinances which are no longer necessary in a modern economy. In particular, the provisions requiring consent for the borrowing of a sum of money greater than £500,000 in a period of twelve months should be repealed as it is an unnecessary check on commercial activity. Other requirements for consent in the Control of Borrowing legislation which the Commission considers to be unnecessary are the requirements to apply for consent for:

(a) the issue of partly paid shares in a Bailiwick company or the shares to be registered in the Bailiwick;

(b) exchanging or substituting new securities for redeemable securities;

(c) the issue of shares where any part of the consideration is the discharge of any capital liability in respect of borrowing;

(d) the capitalisation of profits or reserves prior to the issue of any redeemable shares;

(e) the issue of any securities other than shares if the company is incorporated in the Bailiwick and the securities are to be registered in the Bailiwick; and

(f) the issue of securities of any government other than the government of the UK, Guernsey, Alderney, Sark or Jersey, where the securities are to be registered in the Bailiwick.

The intention of these proposed changes to the Control of Borrowing Ordinances is for the remaining requirements for consent to be those specified at sub-paragraphs (a), (b), (d), (e), and (f) in paragraph 54 above.

It is intended that these remaining requirements under the Control of Borrowing Ordinances will eventually be replaced.

Proposed streamlining of Commission's internal process

56. Finally, in order to streamline the Commission's decision-making process the Commission has suggested, and the Policy Council concurs, that the Commission's Decisions Committee should itself be able to make adverse decisions and for such decisions to be deemed to be decisions of the Commission. This will require amendment of the Financial Services Commission Law, which currently provides that adverse decisions relating to licensees must be taken by the Commissioners as a body – they are unable to delegate that function to the executive under the Law. To support this proposal the Commission intends to expand the Decisions Committee to comprise three (rather than the existing two) Commissioners, supported and advised by either two Directors of the Commission (in this context the term "Director" would include the Director General) or one Director and one Deputy Director, but not the Director of the Division concerned. It should be emphasised that in any case where an adverse decision may be made, the person affected will be afforded the opportunity of making representations in person to the Committee.

57. The effect of these proposals would be that where the Decisions Committee cannot satisfy itself that a decision should be made in favour of the applicant/licensee/scheme, it would issue an adverse decision as a decision of the Commission. Persons will have the opportunity to make representation in person to the Decisions Committee. In addition, any adverse decision by the Decisions Committee would be appealable to the Royal Court, which would have the ability to conduct a full review of the Commission's decision.

58. The Decisions Committee would have the power to take appealable decisions about applicants for a licence/authorisation and about licensees/authorised entities currently taken by the Commissioners acting as a body. This would be in respect of the regulatory laws referred to in paragraph 6 of this Report and under company law as referred to in paragraph 53, and would include the appealable decisions set out in paragraphs 50(a) to (j). Adverse decisions taken by the Decisions Committee would be decisions of the Commission, and therefore would not be referred for review or confirmation to the Commissioners as a separate body but an appeal by an aggrieved person could be made to the Royal Court as set out in paragraph 49. A decision to impose a discretionary financial penalty, as with any other enforcement power, could be taken by the Decisions Committee and would be appealable to the Royal Court. As far as administrative financial penalties are concerned, the amount of the financial penalty appropriate in specific circumstances would be determined by regulations made by the Commission with the agreement of the relevant political bodies of the Bailiwick. Those penalties would then be levied automatically on a breach occurring, without any exercise of discretion by the Commission or the Decisions Committee.

Costs

59. The proposals in this States Report do not increase the costs of any committee or department of the States of Guernsey. It is not anticipated that any additional staff will be required at the Commission.

Alderney and Sark

60. The Commission has consulted with the political authorities in Alderney and Sark. The Policy and Finance Committee in Alderney, whilst it has yet to formally consider the proposals set out in this Report, has confirmed that the consistent view of the States of Alderney is that it has a common interest in high quality regulation and would wish that the same level of protection is afforded persons doing business in Alderney as in Guernsey. The political authorities in Sark will be discussing the proposals at a future meeting.

Consultation

61. The Commission has consulted with Commerce and Employment Department on its proposals. In April the Commission issued the proposals in this document for finance industry consultation. Industry’s responses have been considered before completion of this report and the Commerce and Employment Department's views have been taken into account.

Recommendations

62. The Policy Council recommends the States to approve the changes to legislation

included in this report and summarised below:

(a) The extension of the enforcement powers available to the Commission to include:

(i) the issuing of a public statement about a regulated person or individual employed by a regulated person where there have been contraventions of rules or legislation, or where there is a need to do so to protect the public;

(ii) the introduction of enabling legislation for the imposition of administrative penalties which would not be activated unless regulations are made by a States of Guernsey body; and

(iii) the application of discretionary financial penalties against regulated persons and individuals employed by a regulated person.

(b) For appeals against decisions of the Commission to be made to the Royal Court and for the Royal Court to be able to conduct a full review of the Commission's decisions.

(c) The improvement of the rights of appeal to include the appealable decisions set out in paragraph 50 of this Report.

(d) That the Royal Court should be empowered:

(i) to review the Commission's decisions in disputed cases affecting financial services businesses; and

(ii) where it disagrees with the Commission's decision in such cases, to quash the decision and remit the matter to the Commission for reconsideration.

(e) That the Royal Court should decide the allocation of costs for each case between the parties involved with an appeal.

(f) The updating of the Banking Supervision, Protection of Investors and Regulation of Fiduciaries Laws as outlined in paragraph 52 of this Report.

(g) The amendment of company legislation to introduce rights of appeal and criteria as described in paragraph 53 of this Report.

(h) The repeal of unnecessary elements of the Control of Borrowing legislation as identified in paragraph 55 of this Report.

(i) The amendment of the Financial Services Commission Law to enable the Commission's Decisions Committee to take adverse decisions, subject to the right of appeal to the Royal Court.

M W Torode
Chief Minister

18th June 2007

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 18th June, 2007, of the Policy Council, they are of the opinion:-

1. To approve the changes to legislation included in that Report and summarised below:

(a) The extension of the enforcement powers available to the Commission to include:

(i) the issuing of a public statement about a regulated person or individual employed by a regulated person where there have been contraventions of rules or legislation, or where there is a need to do so to protect the public;

(ii) the introduction of enabling legislation for the imposition of administrative penalties which would not be activated unless regulations are made by a States of Guernsey body; and

(iii) the application of discretionary financial penalties against regulated persons and individuals employed by a regulated person.

(b) For appeals against decisions of the Commission to be made to the Royal Court and for the Royal Court to be able to conduct a full review of the Commission's decisions.

(c) The improvement of the rights of appeal to include the appealable decisions set out in paragraph 50 of that Report.

(d) That the Royal Court shall be empowered:

(i) to review the Commission's decisions in disputed cases affecting financial services businesses; and

(ii) where it disagrees with the Commission's decision in such cases, to quash the decision and remit the matter to the Commission for reconsideration.

(e) That the Royal Court shall decide the allocation of costs for each case between the parties involved with an appeal.

(f) The updating of the Banking Supervision, Protection of Investors and Regulation of Fiduciaries Laws as outlined in paragraph 52 of that Report.

(g) The amendment of company legislation to introduce rights of appeal and criteria as described in paragraph 53 of that Report.

(h) The repeal of unnecessary elements of the Control of Borrowing legislation as identified in paragraph 55 of that Report.

(i) The amendment of the Financial Services Commission Law to enable the Commission's Decisions Committee to take adverse decisions, subject to the right of appeal to the Royal Court.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions

POLICY COUNCIL

PROPOSED CHANGES TO THE PROTECTION OF INVESTORS LAW, THE CONTROL OF BORROWING ORDINANCE AND THE COMPANY SECURITIES (INSIDER DEALING) LAW

Executive summary

1. The Policy Council recommends that the States agrees to legislative changes set out in this report in order to enhance the development of the finance sector, to increase investor protection, to assist Guernsey's finance sector to be seen as fair, efficient and transparent and to reduce systemic risk.

2. The recommendations include the proposals requiring primary legislation suggested by a working party (the Harwood Committee) established in 2005 by the Commerce and Employment Department and the Guernsey Financial Services Commission to consider the investment industry in the Bailiwick and the conditions required for its continued prosperity. The recommendations contained in this report have modified some of the legislative approaches suggested by the Harwood Committee but achieve the same objectives. Other recommendations of the Harwood Committee can be met by changing policies or rules made under the Protection of Investors Law. For example, the Guernsey Financial Services Commission, ("the Commission") with the agreement of the Policy Council, has already introduced a framework for registered closed-end funds under the Control of Borrowing legislation. A working group of industry practitioners will be established to help prepare the rules arising from the Harwood Committee's recommendations not covered in this report.

3. This Report recommends changes to the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959, as amended and the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996, as amended. The proposed changes include:

   - repealing those elements of the Control of Borrowing Ordinances relating to the raising of capital (which include the raising of capital for closed-end funds), except for the raising of capital by the issue of shares to form Guernsey and Alderney companies (paragraph 7 of this report);

   - amending the Protection of Investors Law to introduce (i) registered open-ended funds as well as the existing provisions on regulated open-ended funds; and (ii) registered and regulated closed-end funds – as implied above closed-end funds are currently considered under the Control of Borrowing Ordinances rather than the Protection of Investors Law (paragraph 7);

   - extending the existing exemptions under the Protection of Investors Law so

that professional firms located outside the Bailiwick promoting investments to Guernsey regulated firms do not require a licence under the law (paragraph 8);

- repealing those elements of the Control of Borrowing Ordinances on the circulation of prospectuses in favour of the introduction of an enabling power in the Protection of Investors Law for the Commission to make regulations on prospectuses (paragraph 9);

- repealing the requirements in the Control of Borrowing Ordinances for consent for the issuing of shares in a company which are, or are to be, registered in the Bailiwick if the transaction consists of or includes the raising or borrowing of money outside the Bailiwick or if it consists of exchanging or substituting new shares for redeemable shares (paragraph 10);

- introducing objectives in the Protection of Investors Law on the protection of investors; ensuring markets are fair, efficient and transparent; and reducing systemic risk (paragraph 11);

- using the existing Ordinance making powers, as supplemented by any necessary amendments, in the Protection of Investors Law to provide for the Commission to approach the Court for the Court to appoint an administrative manager, to wind up an investment firm or to issue an injunction in narrowly defined circumstances – namely, where this is necessary to minimise damage and loss to investors or to contain systemic risks (paragraph 12);

- introducing the ability in the Protection of Investors Law for the Commission to appoint inspectors to find out facts about particular issues – subject to appeal to the Court (paragraphs 13 and 14);

- introducing powers in the Protection of Investors Law for HM Procureur to investigate whether market manipulation has occurred, to apply to the Bailiff for a warrant for appointed persons to enter and search premises, and to obtain and transmit material potentially relating to market manipulation to foreign authorities (paragraphs 18 and 19);

- introducing power in the Protection of Investors Law for the Commission to obtain information and documents directly from unregulated persons in respect of foreign enquiries into administrative or regulatory breaches (i.e. non-criminal breaches) of foreign market manipulation provisions. It is recommended that this law should also include safeguards including that no approach should be made to an unregulated person unless the Commissioners have agreed that the approach is appropriate. The use of powers to obtain information and documents from unregulated persons – and regulated persons - would be subject to appeal to the Court and a right against self-incrimination also included in the Protection of Investors Law. It is also recommended that this law should require the Commission to keep

records on its enquires on behalf of foreign investment supervisors (paragraphs 20 to 32);

- introducing the ability for the States of Guernsey to amend the Insider Dealing Law by Ordinance (paragraph 33); and

- otherwise as set out in this Report.

4. The above proposals are the outcome of two rounds of consultation with industry.

Development of the open and closed-end funds sector

5. With regard to Guernsey collective investment funds, the Protection of Investors Law currently applies only to open-ended funds, i.e. collective investment schemes where investors have an entitlement to redeem their shares. All open-ended funds established in Guernsey or any foreign open-ended fund with a manager, administrator and custodian/trustee in Guernsey must be authorised by the Commission and are subject to ongoing regulation. Regulation includes compliance with rules issued by the Commission.

6. Guernsey closed-end funds are not authorised and regulated under the Protection of Investors Law. Instead, closed-end funds require consent from the Commission (acting on behalf of the Policy Council) under the Control of Borrowing Ordinances for the raising of capital by the issue of shares, units or interests in limited partnerships.

7. In order to enhance the development of the finance sector by increasing its ability to compete internationally and to simplify regulation, it is recommended that:

- the provisions of the Control of Borrowing Ordinances relating to the raising of capital (which include the raising of capital for closed-end funds), except for the raising of capital by the issue of shares to form Guernsey and Alderney companies, should be repealed;

- the Protection of Investors Law should be amended so as to apply similar provisions to both open-ended and closed-end funds. Funds would be divided into two categories – regulated funds and registered funds. Regulated funds would be subject to rules and ongoing supervision by the Commission. Registered funds would simply be notified to the Commission. They would not be regulated but, in order to protect the reputation of the Bailiwick, they would still be required under the law to appoint a local administrator and to make an initial and annual filing with the Commission so that it can maintain a register of funds and conduct on-site inspections of how the administrators carry out their duties. The other provisions of the law, such as those allowing the Commission to be able to

take remedial action for the protection of investors, would apply to registered funds. Registered funds could not be offered directly to the public in Guernsey.

The existing ability under the Protection of Investors Law to make rules in respect of regulated open-ended funds would continue but it is recommended that the law should also be extended so that rules can be made by the Commission in connection with regulated closed-end funds and notification rules for registered open-ended and closed–end funds. As with regulated open-ended funds, the Commission would consult with the investment sector before making any rules in respect of regulated closed-end funds or registered open-ended and closed-end funds.

Licensed activities

8. It is recommended that the Protection of Investors Law should include the ability for the Commission to make regulations which would amend the investment activities which, if carried on in or from within the Bailiwick, require a licence. These activities are promotion, subscription, registration, dealing, management, administration, advising and custody in relation to investments and operating an investment exchange. The Policy Council also proposes that the Protection of Investors Law should be amended to extend the existing exemptions under the law so that professional firms located outside the Bailiwick promoting investments to Guernsey regulated firms (but not the public) do not require a licence under the law. This should remove an unnecessary restriction on access by Guernsey licensees to products and services from other markets.

Prospectuses

9. The Control of Borrowing legislation requires consent to be obtained from the Commission (acting on behalf of the Policy Council) before a prospectus or other offering document is circulated in the Bailiwick This legislation does not contain criteria for considering a consent or any appeal provisions if consent is refused. This approach is no longer appropriate. It is therefore recommended that the elements of the Control of Borrowing legislation which require consent before a prospectus or other offering document is circulated should be repealed. In their place an enabling provision should be introduced in the Protection of Investors Law so that the Commission may make regulations governing the circulation of offering documents seeking to raise capital by the issue of securities, whether or not the offering documentation is issued directly to the public. The regulations would include, for example, minimum criteria for disclosure in the offering documentation, a requirement to file the documentation and an appropriate fee with the Commission, together with the provision to the Commission of a certificate from a local advocate confirming that the requirements of the regulations have been satisfied. There would also need to be offences for breaches of the regulations and appropriate penalties.

Registration

10. The Control of Borrowing legislation requires consent to be obtained from the Commission (acting on behalf of the Policy Council) for the issuing of any shares of any company which are to be registered in the Bailiwick if the transaction consists of or includes the raising or borrowing of money outside the Bailiwick or if it consists of exchanging or substituting new shares for redeemable shares. In light of the long-standing requirement to obtain a licence under the Protection of Investors Law to conduct the activity of registration in respect of the wide ranging investments defined in the law, the requirement to seek consent under the Control of Borrowing legislation is no longer necessary and it is recommended that the requirement should be repealed.

IOSCO objectives

11. It is recommended that the Protection of Investors Law should be amended to include the objectives for investment regulators established by the International Organization of Securities Commissions ("IOSCO"), which is the world's most important forum for investment regulatory agencies and which sets standards for investment regulators. The objectives are:

- the protection of investors;
- ensuring markets are fair, efficient and transparent;
- reducing systemic risk.

The Protection of Investors Law is the appropriate regulatory law in which to include the IOSCO objectives as the Protection of Investors Law is concerned in large part with investment regulation. The Policy Council considers that all three of IOSCO's objectives are appropriate for the Commission to adopt through its regulation of licensees (including the Channel Islands Stock Exchange) and fund business.

Intervention, administration and winding up

12. Section 28 of the Protection of Investors Law provides that the States of Guernsey may modify or supplement by Ordinance any enactment appertaining to the winding up or other dissolution of a Bailiwick body which carries on investment business or which applies for a licence or an authorisation. Such an Ordinance may empower the Commission to apply for the winding up, or to take steps in relation to the dissolution, of a Bailiwick body. It may also make special provision as to the grounds upon which, and the manner in which, a Bailiwick body may be wound up or dissolved, and for the application of assets of such body. In addition, the Ordinance may permit the continuance of any description of business of a Bailiwick company with a view to its transfer as a

going concern to another body, and empower the appropriate court to give directions and orders, including an order to reduce the amount of the contracts of the company in place of ordering it to be wound up. It is recommended that this power should be exercised and amended if necessary so that the Commission may approach the Court in individual cases to appoint an administrative manager or to wind up any licensee or applicant under the Protection of Investors Law, or to otherwise prevent such licensee or applicant from undertaking business in the Bailiwick by the issue of an injunction. It is recommended that such an approach to the Court should be made only where it is necessary to minimise damage and loss to investors or to contain systemic risks. It is further recommended that the Court should only grant such powers to the Commission on a case by case basis and on appropriate application by the Commission. In order to assist with these objectives, it is proposed that the Commission should also have specific powers to:

- ensure assets are properly managed by for example requiring a licensee to appoint a person to take possession or control of assets held by the licensee or by a third party on behalf of a licensee or to otherwise minimise the risk to investors and counterparties, and systemic risk;

- restrict activities by a licensee with a view to minimising damage and loss to investors;

- require a licensee to take specific actions such as moving client accounts to another firm;

- make public relevant information concerning a licensee's failure.

The Protection of Investors Law should make it clear that the use of all of these powers should be appealable to the Royal Court by the licensee or applicant.

Appointment of inspectors

13. The Investment Business Division of the Commission, which administers the Protection of Investors Law, has carried out a number of investigations under the law. The most significant of these has been the investigation into the promotion of split capital investment trusts. The cost of this investigation was and still is significant both in terms of staff time and money and it highlights the importance of amending the Protection of Investors Law to include provisions equivalent to those in the Banking Supervision Law, the Insurance Business Law, the Insurance Managers and Insurance Intermediaries Law and the Regulation of Fiduciaries Law concerning investigations by inspectors. It is recommended that, if it is desirable to do so in the interests of the customer of a licensee under the Protection of Investors Law or for the protection or enhancement of the reputation of the Bailiwick, the Commission should have the power to investigate or appoint persons to investigate and report to it on matters of concern. It is also recommended that a licensee would be able to

appeal to the Court against the appointment of an inspector. It is envisaged that the Protection of Investors Law would mirror the Regulation of Fiduciaries Law as closely as possible on the appointment. In line with the Regulation of Fiduciaries Law it is recommended that the provisions on the appointment of inspectors in the Protection of Investors Law would cover former licensees, but only in connection with the business, ownership or control of a former licensee at a time when it held a licence under the law. It has been suggested that the appointment of inspectors is necessarily combative. The Commission has confirmed that this has not been the case in practice. Inspectors are appointed to ascertain facts. Inspectors can be appointed to investigate particular matters which, for example, require urgent attention and a licensee might feel more comfortable with the appointment of an independent third party – the licensee itself might wish inspectors to be appointed.

14. As with the other regulatory laws, it is recommended that it should be possible for the Commission to be able to recover the costs, fees and expenses of an investigation from the licensee(s) which are the subject of an investigation, rather than indirectly through the fees payable to the Commission by licensees as a whole. It is recommended that there should be Court oversight of costs in cases where costs are disputed and the Court should be satisfied that the sum was not unreasonable in amount or was not unreasonably incurred, and that the Commission had not acted unreasonably, frivolously or vexatiously in incurring that sum. Where the Court considers that the costs, fees and expenses arising from an investigation are not reasonable, it would not allow the costs to be borne by the licensee.

IOSCO MMoU

15. Forty-one investment supervisory authorities, including the UK Financial Services Authority, the Jersey Financial Services Commission and the Isle of Man Financial Supervision Commission are signatories to the IOSCO Multilateral Memorandum of Understanding, ("MMoU"). A significant number of other supervisors have applied to become signatories. The MMoU is particularly concerned with cooperation and the exchange of information by investment regulators and is the benchmark for international cooperation. Only investment supervisors may become signatories to the MMoU. Supervisors who sign the MMoU are viewed by their counterparts globally as wishing to ensure the protection of investors; to ensure that markets are fair, efficient and transparent; and to ensure the reduction of systemic risk. As more supervisors sign the MMoU, firms in the jurisdictions of Signatories (particularly small jurisdictions) are likely to have greater access to markets than firms in jurisdictions whose investment supervisor of authority is not a signatory. Guernsey's legislative framework will need to be modified if the Commission is to be successful in its application to sign the MMoU and to be able to honour the commitments entered into by being accepted as a signatory. The proposals below are aimed at allowing the Commission to sign the MMoU and to be able to appropriately satisfy requests for assistance made to it by foreign regulators.

In approving the changes to the Protection of Investors Law to enable the Commission to become a signatory to the MMoU, the States will be endorsing the IOSCO objectives specified in paragraph 11.

16. As the following text makes clear, a distinction is drawn between obtaining and exchanging information in connection with criminal investigations – where the requesting authority is a law enforcement agency such as the police or an examining magistrate – and the information obtained will be utilised by the foreign prosecuting authority – and information obtained and exchanged for the purposes of proceedings which are not criminal in nature, such as investigations and proceedings conducted by regulatory or administrative authorities. In the case of criminal proceedings, HM Procureur is the competent and appropriate authority in Guernsey to act, and in non-criminal investigations and proceedings into alleged breach of financial services laws and regulations, the Commission is the competent and appropriate authority to act.

Market manipulation – criminal offences

17. The Protection of Investors Law already contains provisions which make market manipulation a criminal offence. HM Procureur is able to investigate the potential commission of the offence of market manipulation in Guernsey. In order to assist foreign regulators on the commission of potential criminal offences of market manipulation, HM Procureur can use the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 ("the Fraud Investigation Law") in most, but potentially not all, cases. This law allows HM Procureur by way of a "production notice" to provide a foreign criminal law enforcement or regulatory body with information or documents in connection with market manipulation where the subject of the enquiry may have been involved with the commission of a criminal offence that amounts to serious or complex fraud. Cross border enquiries in connection with potential market manipulation will usually potentially involve serious or complex fraud.

18. The provision of information in connection with the potential commission of a criminal offence of market manipulation to a foreign regulatory body by HM Procureur under the Fraud Investigation Law is not ideal. There may be cases where assistance is requested in respect of potential market manipulation in which it does not appear to HM Procureur, when the request is made, to involve serious or complex fraud. At that stage, no fraud may be disclosed, simply because there is insufficient evidence. As a result, it is possible that HM Procureur may not be able to co-operate with, and provide information or documents to, a body requesting assistance. Accordingly, it is recommended that provisions should be incorporated in the Protection of Investors Law so that HM Procureur may:

(i) appoint inspectors to investigate whether market manipulation has occurred;

(ii) apply to the Bailiff to grant warrants authorising an officer of police and any other person named in the warrant to enter and search premises; and

(iii) obtain and transmit material to foreign authorities, including regulatory bodies, for the purposes of investigating or prosecuting potential offences of market manipulation, in terms similar to the relevant provisions of the Fraud Investigation Law.

Insider dealing – criminal offences

19. The offence of insider dealing is contained in the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 ("the Insider Dealing Law"). Under this law, HM Procureur is able to obtain material from any person in Guernsey. HM Procureur is also able to transmit that material to a prosecuting or regulatory authority in another jurisdiction, if he is satisfied that it is likely to be of relevance to criminal proceedings or an investigation in respect of a contravention or suspected contravention of the law relating to insider dealing in the foreign jurisdiction.

Market manipulation/insider dealing – regulatory/administrative matters

20. With regard to regulatory matters, the Commission can obtain information and documentation under the Protection of Investors Law from regulated persons. However, difficulties arise where a foreign regulator is making enquiries about a potential violation of regulatory or administrative provisions relating to either market manipulation or insider dealing where:

(i) the violation will be dealt with by way of civil or administrative process, not by the jurisdiction's criminal prosecuting authority; and

(ii) where the subject of the enquiry is not a regulated person or business in the Bailiwick or the client of a regulated business in the Bailiwick.

In such cases, there is no legal mechanism which allows either HM Procureur, the Commission or any other body in Guernsey to obtain information, documents or statements, or to interview the person concerned. It is therefore recommended that the Protection of Investors Law should be amended to allow the Commission to deal directly with unregulated, as well as regulated, persons in Guernsey in connection with potential market manipulation or insider dealing, where a foreign regulatory body is making enquiries about a potential breach of its jurisdiction's <u>non-criminal</u> market manipulation provisions, and asks us for assistance. In such cases it is further recommended that the Commission should have the power to investigate, obtain statements and conduct interviews, and when appropriate be able to take copies of information and documents for disclosure to the foreign regulator. If an enquiry involves the personal activity of an officer of a regulated institution, but not the institution itself, the Commission has confirmed it would expect to use these new powers

by approaching the individual rather than require the institution to liaise with the officer. Checks and balances on approaching an unregulated person (such as obtaining the prior approval of Commissioners) and on disclosing information and documentation are described below.

21. In order for any approach to an unregulated person to be enforceable, it is recommended that it should be an offence, subject to a potential fine issued by the Court, for an unregulated person without reasonable excuse to fail to comply with a request by the Commission for an interview or statement or to fail to provide information or documents. In such circumstances, it is also recommended that the Commission should have the ability to apply to the Court for an order requiring the person to comply with its request. Failure to comply with the order would be subject to appropriate penalties decided by the Court. In addition, it is recommended that it should also be an offence, subject to appropriate penalties, for unregulated persons to provide false or materially misleading statements, information or documents or to remove from the Bailiwick, destroy, conceal or fraudulently alter any information or documents to avoid detection of an offence.

Checks and balances on disclosing information and documentation

22. Signatories to the MMoU who make enquiries of other supervisors on potential market manipulation or insider dealing issues are required to provide specific information – the MMoU does not allow "fishing expeditions". Investment regulators must show reasonable cause for their enquiry. The Commission is required by the Financial Services Commission Law to keep non-public material it receives confidential. Any non-public material held by the Commission may only be disclosed to third parties under specified legal gateways. Officers of the Commission can commit a criminal offence under the Financial Services Commission Law for the inappropriate disclosure of information. The disclosure of the information requested by a foreign supervisor must fall within one of the legal gateways in the Financial Services Commission Law and the Protection of Investors Law which permit that disclosure.

23. Where an enquiry involves assistance to a foreign regulator in respect of an unregulated person, each request for assistance would be subject to the same considerations under the Financial Services Commission Law as currently apply to requests for assistance by foreign regulatory bodies. Without any change to legislation being necessary, in dealing with potential approaches to unregulated persons the Commission would therefore have to take into account:

    (i) whether, in the country or territory of the requesting authority, corresponding assistance would be given to the Commission;

    (ii) 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;

(iii) the seriousness of the case and its importance to persons in the Bailiwick;

(iv) whether the disclosure of information to or cooperation with the requesting authority would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question; and

(v) whether it is otherwise appropriate in the public interest to give the assistance sought.

These provisions in the Financial Services Commission Law prevent the inappropriate disclosure of information or documentation and they are stronger (i.e. they provide greater safeguards) than the provisions on which they are modelled – the provisions which apply to the UK Financial Services Authority.

24. Currently, the Commission's executives discuss all sensitive or potentially controversial enquiries made by foreign regulators with the Commissioners and an approach to a regulated person to obtain information is not made unless the Commissioners approve that approach. In light of this no approach to an unregulated person on behalf of a foreign supervisor should be made unless the Commissioners as a body have agreed that the approach is appropriate. It is recommended that the Protection of Investors Law should be changed to reflect this safeguard to the potential obtaining and disclosure of information involving members of the public.

25. It is recommended that the Protection of Investors Law should provide that unregulated persons – and regulated persons should have a right of appeal to the Royal Court against an approach by the Commission to provide information and documents. During the course of an appeal, information and documents will not be obtained by the Commission and, if a request for assistance has been made by a foreign supervisor, therefore not disclosed to the supervisor.

26. In order to avoid the possibility of information and documentation on administrative matters being used for criminal proceedings – in respect of which the proper course for obtaining information lies through HM Procureur – the Commission has confirmed it will verify that the requesting supervisor is seeking information in respect of an administrative, not a criminal, matter. Should the Commission have any doubt that the request for assistance by a foreign supervisory authority involves only an administrative matter, it will liaise with HM Procureur as the matter may be potentially criminal in nature. Such liaison already takes place from time to time for enquiries involving regulated entities.

27. In addition, a right against self-incrimination should be incorporated in the Protection of Investors Law – it is already contained in the regulatory laws enacted from 1994 onwards. The Protection of Investors Law should provide that a statement made by a person under compulsion may not be used as

evidence against him except for offences involving failure to comply with the requirement or the provision of incomplete or false information.

28. As is the case currently in respect of non-public material it provides to foreign regulatory bodies, the Commission will impose a condition with regard to confidential information provided by an unregulated person and disclosed by the Commission under a legal gateway in respect of potential market manipulation or insider dealing so that the recipient of the information is advised that the information is confidential and that it may not further disseminate the information to other bodies without the prior written consent of the Commission. The MMoU requires signatories to it not to disclose non-public information and documents received under it except as contemplated in the request for assistance or in response to a legally enforceable demand. In the event of a legally enforceable demand, any foreign supervisory authority in receipt of information provided by the Commission under the MMoU will, prior to complying with the demand, assert such appropriate legal exemptions or privileges with respect to such information as may be available. The MMoU also requires the overseas authority to use its best efforts to protect the confidentiality of non-public documents and information it receives.

29. Compliance with the MMoU is actively policed by an IOSCO monitoring group. Upon receipt of a complaint by the Commission that a foreign supervisory authority had breached the terms of the MMoU, the monitoring group would commence an investigation. A range of sanctions are available to the monitoring group, including termination of a foreign supervisor's ability to use the MMoU for obtaining information and documentation on potential market manipulation and insider dealing from its international peers. In any case, as the monitoring group comprises all of the signatories to the MMoU, any complained of breach of confidentiality by a supervisory body will be widely known and lead to caution in providing information to that body. These are significant disincentives to a breach of confidentiality by a supervisory authority.

30. It should also be noted that market manipulation and insider dealing are criminal offences in Guernsey. If the Commission considers that such an offence might have been committed in the Bailiwick, it has a responsibility to notify HM Procureur so that he may consider the implications and whether or not a prosecution in Guernsey should be conducted. If an offence has been committed by a Guernsey person, it is likely that an offence both under Guernsey law and foreign law has been committed . Therefore, the Commission would be alerted to the possibility that a criminal offence has been committed both in the Bailiwick and elsewhere. Any suggestion by a foreign supervisor that a criminal offence has been committed abroad would lead to the Commission discussing with HM Procureur the potential for an offence to have been committed in Guernsey and the implications of disclosing information to a third party.

31. During 2004 the Commission issued a public statement on the procedures and implications of interviews it (or inspectors appointed by the Commission) carried out on behalf of foreign regulators. The issue of this statement, which was required by the Financial Services Commission Law, protects individuals who are to be interviewed by providing a framework for providing notice of interviews and for structuring the interviews themselves. The Commission proposes that this statement should be extended to apply to it when dealing with unregulated persons in Guernsey who the Commission approaches in connection with the proposals in this paper.

32. In light of the proposed development of powers for the Commission to conduct enquiries involving unregulated persons, it is recommended that the Commission should be required by the Protection of Investors Law to maintain records in readily accessible form on its enquiries on behalf of foreign investment supervisors for a minimum of 5 years after its investigation into a potential case has been completed.

Insider dealing law

33. Finally, it is recommended that the States should have power to amend the Insider Dealing Law by Ordinance. This will allow Guernsey to respond quickly in future to changes in expectations of jurisdictions' ability to combat insider dealing.

Costs

34. The proposals in this Report do not increase the costs of any committee or department of the States of Guernsey. Some of the proposals will further increase the competitiveness of Guernsey's fund administration sector – this sector is one of the key foundations of the finance industry. Hence, the time taken and the costs to launch new fund products will be reduced. The remaining proposals in this report are to do with increasing the regulatory powers available to the Commission for the protection of investors and the reduction of risks to the Bailiwick's reputation and do not add to the day-to-day compliance burden of industry. As indicated above, in the rare cases inspectors might be appointed, the licensee would be able to have the costs reviewed by the Court.

Alderney and Sark

35. The Commission has consulted with the political authorities in Alderney and Sark. The Policy and Finance Committee in Alderney, whilst it has yet to formally consider the proposals set out in this Report, has confirmed that the consistent view of the States of Alderney is that it has a common interest in high quality regulation and would wish that the same level of protection is afforded persons doing business in Alderney as in Guernsey. The political authorities in Sark will be discussing the proposals at a future meeting.

Consultation

36. HM Procureur has been consulted on the proposals in this Report. He concurs with the Policy Council's recommendations. In December 2006 and January 2007 the Commission consulted with industry on proposed changes to the Protection of Investors Law, the Financial Services Commission Law and the Insider Dealing Law. The proposals included those recommendations made by the Harwood Committee which require primary legislation. Following this consultation, the proposals were refined. A further consultation with industry on the elements contained in paragraph 11 onwards of this Report took place during April and May 2007 and led to further refinement. Industry's responses have been considered before finalising the recommendations in this report. The Commerce and Employment Department have also been consulted on the proposals.

Recommendations

37. The Policy Council recommends the States to approve the changes to legislation included in this report and summarised in paragraph 3 of this Report.

M W Torode
Chief Minister

18th June 2007

(NB The Treasury and Resources Department supports the proposals.)

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 18th June, 2007, of the Policy Council, they are of the opinion:-

1. To approve the changes to legislation included in that Report and summarised in paragraph 2 of that Report.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

COMMERCE AND EMPLOYMENT DEPARTMENT

PROPOSED CHANGES TO THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES LAW AND THE INSURANCE BUSINESS LAW

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

18th June 2007

Dear Sir

The Guernsey Financial Services Commission has written to the Commerce and Employment Department in the following terms:

"1. <u>Executive Summary</u>

The Commission recommends that the States be requested to approve the following amendments to the Insurance Managers and Insurance Intermediaries Law ("IMIIL") and the Insurance Business Law ("IBL") (together 'the Laws') to ensure that Guernsey's insurance laws remain up to date and continue to meet international requirements by operating in an appropriately regulated and efficient manner. The international requirements lay down a framework of standards for protecting policyholders, the prevention of fraud, and the prudent management and operation of insurers.

The evolution of the Commission's proposals has been guided by a number of developments which have occurred since the Laws were promulgated in 2002. These include:

(a) Since 2002 it has, regrettably, been necessary to take regulatory action against a number of intermediaries due to their failure to comply with applicable regulatory standards. Additionally our programme of intermediary on-site visits has revealed a trend of deficiencies in the operation of certain intermediaries; and

(b) In the light of these developments the Commission considers that the regulatory framework for intermediaries should be strengthened. The intermediary proposals are designed, therefore, to raise the standards of management and operations of this sector, which should, therefore, enhance the protection of policyholders. The proposed amendments to

IMIIL are an important element of a co-ordinated three-year programme for intermediaries which commenced in January 2007. This initiative also includes regular educational seminars, themed on-site visits, and annual meetings with each licensed intermediary; and

(c) The Commission's experience of operating its regulatory powers under the Laws has shown that in certain limited respects their powers should be enhanced to improve its ability to effectively regulate the insurance sector; and

(d) With particular regard to the proposals concerning the IBL we have taken the opportunity to 'fine tune' a number of its technical provisions which will improve its operation; and

(e) The introduction of expanded Core Principles designed to improve further the protection of policyholders which were issued in October 2003 by the International Association of Insurance Supervisors (IAIS).

The proposed changes to IMIIL and IBL have been considered by Steering Groups and Working Parties made up of industry representatives and members of the Insurance Division of the Commission. Following development of the proposed changes, consultation papers outlining the proposed amendments to the laws were circulated to the wider insurance community in the Bailiwick to obtain further input so that the proposals could be refined. The revised proposals are set out below.

The recent judgement given by the Royal Court of Jersey in the case of the Jersey Financial Services Commission (JFSC) vs Alternate Insurance Services Limited (AISL) and others was handed down at a late stage in the development of the IMIIL proposals. This case concerned proceedings commenced by the JFSC against certain Jersey intermediaries who had allegedly recklessly 'sold' geared traded endowment policies ('TEPs') to certain Jersey residents. The Royal Court issued a judgement in favour of the JFSC requiring the intermediaries to pay compensation of about £1.5million. The intermediaries have insufficient funds to satisfy this judgement and their professional indemnity ('PI') insurers have purported to avoid the relevant PI policies. The effect of this avoidance is to terminate the policy from its inception. The consequence of this unfortunate situation is that the innocent Jersey policyholders are unlikely to recover their losses in full. In order to prevent such a situation reoccurring the Royal Court made general recommendations about improving Jersey insurance regulatory legislation for the benefit of policyholders. The Commission noted these recommendations and has discussed with the insurance sector certain initial proposals arising from the AISL case which require further refinement and consultation. The Commission intends to issue a separate consultation paper in the summer setting out its fully developed proposals concerning the discrete particular issues raised by the AISL case, which it anticipates will necessitate certain specific further amendments to the IMIIL.

In addition to the proposed changes to the Laws there will be changes to various associated codes, rules and regulations.

2. Proposed Changes to IMIIL

2.1 Minimum Capital and Licensing Criteria

2.1.1 Minor drafting change – substitution of expression 'Minimum Capital Requirement' for 'Reserve Asset Requirement'

An important part of the financial security for policyholders is the minimum capital requirement which licensees must maintain. It is proposed that for the purposes of clarifying the language of sub-section 4(2)(i)(ii)A of IMIIL that the reference to 'Reserve Asset Requirement' should be changed to 'Minimum Capital Requirement'. It is also proposed that sub-section 4(2)(i)(iii)B should be deleted. This sub-section applies to applicants which are not companies and provides that a security deposit is to be lodged in an amount equal to or exceeding the Reserve Asset Requirement. It is considered inappropriate to license entities which are not companies and, therefore, this sub-section is not required.

2.1.2 Minimum Level of Professional Indemnity

It is proposed that s2.4(b) of IMIIL which currently reads:

> 's2.4 A licensee shall…….provide the Commission with:
>
> (b) such evidence as the Commission may require of adequate professional indemnity insurance cover in respect of the licensee.'

should be amended to provide along the following lines

> 's2.4 A licensee shall…….provide the Commission with:
>
> (b) such evidence of professional indemnity insurance cover in respect of the licensee as is required by the Commission under rules issued by the Commission from time to time concerning licensee's professional indemnity cover.'

The reason for this clarifying amendment is that the Commission since 1998 has stipulated minimum levels of professional indemnity cover which are required to be obtained by licensees. In view of this requirement the reference in section 2.4(b) to 'adequate professional indemnity cover' is in our view imprecise; the new wording properly reflects the requirements which must be satisfied by licensees. The Commission will be taking the opportunity of varying the PI rules by increasing the minimum levels of professional indemnity cover required by licensees.

2.1.3 Requirement to Disclose Regulatory Issues and Other Information to PI Insurers

An insurance policy is voidable at the option of insurers if there has been non-disclosure or misrepresentation of material facts at the time of the placement of an insurance. The AISL Jersey case has shown the potential adverse consequences for policyholders if an intermediary's PI policy is avoided from its inception. Regulatory action is material information which should be disclosed to PI insurers at the time of the placement of the policy. In view of this requirement it is proposed that the IMIIL should be amended to provide that the imposition of conditions or regulatory penalties against a licensee must be notified to its PI insurers through its PI brokers at the time of the placement of the PI policy. Evidence of this disclosure, and the implications (if any) concerning the terms of cover, should be promptly provided to the Commission.

It is further proposed that the IMIIL should also contain a general requirement that licensees must notify their PI insurers, through their PI brokers, of all material facts in applications for PI cover and confirm in writing to the Commission that such disclosure has been made. It is also suggested that intermediaries will be required to promptly notify the Commission that they have complied with all warranties, which are contained in their PI policy as well as any other relevant matters which require notification or disclosure which are required to be made during the life of the cover. For example, the licensee may be contractually obliged to notify its PI insurers if any conditions or regulatory penalties are imposed on the licensee by the Commission during the duration of the policy.

Any actual or purported terminations, avoidance or invalidations of cover for in-force PI insurance or rejection of notification/claims should be notified to the Commission immediately.

2.2 Ongoing Business Requirements

2.2.1 Enhanced Reporting Requirements to the Commission – Trigger Events

Reporting to the Commission will continue to be required annually. Additionally, it is proposed to expand the "trigger events" which result in a requirement to notify the Commission for its approval or remediation of the cause of the "trigger" event. It is proposed that these 'trigger events' should be described comprehensively in one place in regulations and not in several sections of IMIIL. Such 'trigger events' will include changes in director, controller, and partner and when a complaint has not been satisfactorily resolved within 90 days of its receipt.

2.2.2 Enhanced Reporting Requirements to the Commission – Annual Return

It is proposed that section 20(2) of the IMIIL should be repealed and the annual return regulations enhanced. This will involve certain detailed technical improvements in the reporting requirements concerning the annual return. Section 20(2) of the IMIIL currently contains an incomplete list of documents which are to accompany a licensee's annual return. It is preferable for the relevant documents to be listed comprehensively in one place which should be in the regulations. These regulations will include details of all overseas regulatory licences, authorisation and permissions, and details of all outsourced or delegated functions. The Commission believes these are required to ensure it has a more complete understanding of the operations of intermediaries.

2.2.3 Amendment to Section 27(5) of the IMIIL

Section 27(5) of the IMIIL refers to the requirement to notify the Commission, and obtain approval for changes to directors, controllers, partners, managers, or authorised insurance representatives (AIRs). AIRs must be authorised by their principals and only authorised AIRs may advise on or place insurance business in or from the Bailiwick.

It is proposed that the requirement to seek approval for changes in AIRs should be modified to require notification of the change, to make this section of IMIIL consistent with the Conduct of Business Rules made under IMIIL.

2.3 Commission Powers

2.3.1 Prohibition Orders

The IMIIL should be updated to include prohibition orders in the same way as is currently provided for under the laws relating to other entities regulated by the Commission. The effect of this will be to empower the Commission to prevent any person, whom it deems not to be fit and proper to perform their duties, from performing duties in relation to the regulated activities of a licensee. The exercise of this power will be subject to the Commission's internal approval procedures and appeal process to the courts.

2.3.2 Removal of the Licence Suspension Provision

It is proposed to remove the power of the Commission to suspend intermediaries' licences because this is not required as in the rare cases that suspension may be required, this can be more effectively achieved by the imposition of conditions which is a power which is currently already contained in the IMIIL.

2.3.3 Publication of Notices

Section 7(9) of IMIIL concerns the publication by the Commission of the fact that conditions have been imposed on licences but not the details of the conditions which have been imposed. This section grants the Commission discretion whether or not to publish such notice based on the circumstances of the case. Section 12 of IMIIL requires the disclosure of conditions. It is proposed to amend Section 12 of the IMIIL to make it consistent with Section 7(9).

2.3.4 Investigation by Inspectors

Section 46 of the IMIIL relates to the powers of the Commission to appoint inspectors to investigate and report on licensees which is already subject to the appeal procedures. It is considered it is appropriate to extend this power beyond licensees to limited categories of persons other than licensees, which are:

2.3.4.1 Persons who appear to the Commission to be conducting unlicensed business; and

2.3.4.2 Persons providing services to licensees.

2.3.5 Publication of Revocation Notices

It is proposed that the Commission has the power to publicise a decision to revoke a licence during the notice period or period of appeal against its decision. This will assist the Commission in carrying out its statutory function of the protection of the public interest.

2.4 Other Miscellaneous changes

2.4.1 Insurance Managers acting as Insurance Intermediaries

It is proposed to make a minor clarifying drafting amendment to section 2(5). The first two lines of this subsection currently provide: 'An **insurance intermediary** is a person other than an insurance representative or a licensed insurance manager ….'. The inclusion of the expression 'licensed insurance manager' conflicts with section 18(4) which extends the meaning of 'licensed insurance intermediaries' to include licensed insurance managers acting as insurance intermediaries. If this proposed amendment is made section 2(5) would read "An 'insurance intermediary' is a person other than an insurance representative, who by way of business".

2.4.2 Definition of Auditor

It is proposed that the definition of "auditor" in Schedule 3 should be amended to remove reference to "and who is approved by the Commission to audit the accounts of licensees."

2.4.3 Inter-relationship between Codes of Practice and IMIIL

It is proposed that section 27(4) should be reworded to provide that a contravention by any person of a provision of a code issued under the IMIIL should not of itself render a person liable to criminal proceedings. Such a contravention may be taken, however, into consideration by the Commission in considering whether and in what manner to exercise its powers. It is further proposed that contravention by any person of a code issued under the IMIIL shall remain admissible as evidence in any court or tribunal.

2.4.4 Credit Life Assurance

It is proposed to amend paragraph 7 of Schedule 1 of IMIIL by increasing the minimum term for long term insurance policies to qualify as credit life assurance contracts from 5 years to 10 years. This is consistent with the proposed amendment to the IBL described in paragraph 3.1.13.

3. IBL

3.1 Proposed amendments to the main body of IBL

3.1.1 Approval of Portfolio Transfers

Currently portfolio transfers are only subject to notification to the Commission as a change in business plan. It is proposed that, in future, these will be subject to the specific approval of the Commission.

3.1.2 Requirement to Obtain Personal Questionnaires (PQs)

The requirement for submission of PQs is unnecessary in the case of a non-locally incorporated domestic insurer regulated in another recognised jurisdiction. It is proposed to give the Commission discretion to dispense with this requirement.

3.1.3 Approval of Significant Increases in Voting Power

At present further increases in the entitlement to exercise more than 15% of the voting power in general meeting of company are not subject to the approval of the Commission. It is proposed to make significant increases of voting power subject to such approval.

3.1.4 General Representative of a Licensed Insurer

It is proposed to extend section 29(5) so that a General Representative (in addition to a licensed insurer) who contravenes any provision of section 29 is guilty of an offence. Each licensed insurer is required to appoint a General

Representative which acts generally on behalf of the insurer and accepts service of documents on its behalf.

3.1.5 Licensees to Formulate and Justify Their Own Solvency Margin Requirements

It is proposed that licensees will be required to formulate and justify their own view of their solvency margin requirements to the Commission subject to a minimum of the solvency margin requirements.

3.1.6 Ability of the Commission to Modify Solvency Margin Requirements

It is proposed that the current duplication between different sections of the IBL that give the Commission the power to vary solvency margin requirements should be rectified.

3.1.7 Ability of the Commission to Modify the Minimum Capital Requirement (MCR)

It is proposed that the requirement for an acceptable letter of credit or approval for a modification of the solvency margin requirements as a pre-condition to reducing or increasing the minimum capital requirement be removed. This recommended change will increase the flexibility of the Commission to modify the MCR in specific appropriate circumstances.

3.1.8 Appointment of an Actuary by Insurers with Long Term Business

In certain circumstances, for example where the risks are fully reinsured, it may be unnecessary for a company writing long term business to appoint an actuary. It is proposed to give the Commission power to waive this requirement where appropriate.

3.1.9 Transfers of Long Term Business

In the case of a transfer of long term business, the Royal Court currently has to give consent that a statement need not be sent to certain policyholders (e.g. non-Guernsey residents). It is intended to replace this by a requirement for the Commission to provide this consent.

3.1.10 Transfers of Long Term Business

It is proposed to change the requirement to give a period of at least 21 days for policyholders to object to a transfer of long term business to 42 days as it is believed that 21 days is inadequate, particularly for international policyholders. It is proposed, also, that the Commission should have a discretion, if it considers it is appropriate, to vary the period of 42 days.

3.1.11 Transfers of Long Term Business

It is proposed that the requirement to deposit two copies of orders of the Royal Court sanctioning transfers of long term business with the Commission should be reduced to one copy.

3.1.12 Credit Life Assurance Contracts

It is proposed to increase the minimum term for long term insurance policies to qualify as credit life assurance contracts from 5 years to 10 years. This will extend the exemption for shorter term contracts from the requirements of Sections 40 to 46 (actuarial requirements and transfers of long-term business).

3.1.13 Margin of Solvency Calculation to be Based on Premium Net of Commission as Well as Reinsurance

It is proposed that the deduction of commission should be permitted in computing the net premium used in the margin of solvency calculation as the level of commission does not impact the underlying risk.

3.1.14 Prospective Margin of Solvency Calculation to be Based on Net Premium

It is proposed that the prospective margin of solvency calculation should be based on projected net premium income rather than gross premium income.

3.1.15 100% of Minimum Margin of Solvency to be Covered by Approved Assets

It is proposed to remove the ability of insurers to cover automatically a specific proportion of their solvency margin requirement by unapproved assets, as this should be subject to specific approval by the Commission. This proposal would be subject to appropriate transitional arrangements for existing licensees as the Commission has the power to approve specific assets for solvency purposes.

3.1.16 Unapproved Assets

Certain assets are deemed to be unapproved assets in subparagraphs 4, 5 and 6 of paragraph 2 of Schedule 2. It is preferable to include definitions of approved and unapproved assets in The Insurance Business (Approved Assets) Regulations rather than in two separate places it is proposed to make this drafting clarification.

3.1.17 Definition of Controller

It is proposed that the definition of “controller” should be extended to include persons who have the power to appoint or remove directors of the board and other executive committees.

3.2 Commission Powers

3.2.1 Publication of Notices

Section 12(9) of IBL concerns the publication by the Commission of conditions imposed on licences. This Section grants the Commission discretion whether or not to publicise the conditions based on the circumstances of the case. Section 17(2)(e) of IBL requires disclosure of conditions. It is proposed to amend Section 17(2)(e) of IBL to make it consistent with Section 12(9). This is the same recommendation made in relation to the equivalent provision in IMIIL contained in paragraph 2.3.3 of this letter.

3.2.2 Licence Suspension Provisions

It is proposed to remove the power of the Commission to suspend intermediaries' licences. This is not required because, in the rare cases that suspension may be required, this can be more effectively achieved by the imposition of conditions which is a power currently contained in the IMIIL. This proposal is the same as that made concerning the equivalent provision in the IMIIL set out in paragraph 2.3.2 of this letter.

3.2.3 Inter-Relationship between Codes of Practice and IBL

It is proposed that the relevant sections of the IBL should be reworded to provide that a contravention by any person of a provision of a code issued under the IBL should not of itself render a person liable to criminal proceedings. Such a contravention by the Commission may be taken, however, into consideration by the Commission in considering whether and in what manner to exercise its powers. It is further proposed that contravention by any person of a code issued under the IBL should remain admissible as evidence in any court or tribunal. This recommendation is the same as that made concerning the equivalent provision relating the IMIIL contained in paragraph 2.4.3 of this letter.

3.2.4 Inspectors

Section 69 of the IBL relates to the powers of the Commission to investigate and report on licensees, which is subject to the appeal procedures provided in the Law. It is considered it is appropriate to extend this power beyond licensees to limited categories of persons other than licensees, which are:

3.2.4.1 Persons who appear to the Commission to be conducting unlicensed business; and

3.2.4.2 Persons providing services to licensees.

This recommendation is the same as the proposal made concerning the equivalent provision in IMIIL contained in paragraph 2.3.4 of this letter.

3.2.5 Prohibition Order

The IBL should be updated to include prohibition orders in the same way as is currently provided for under the laws of other regulated entities regulated by the Commission. The effect of this will be to empower the Commission to prevent any person, whom it deems not to be fit and proper to perform their duties, from performing duties in relation to regulated activities of the licensee. The exercise of this power will be subject to the Commission's internal approval procedures and the appeal process to the courts. This recommendation is the same as the proposal made concerning the equivalent provision in IMIIL contained in paragraph 2.3.1 of this letter."

Costs

The proposals in this Report do not increase the costs of any committee or department of the States of Guernsey. It is not anticipated that any additional staff will be required at the Commission.

Alderney and Sark

The Commission has consulted with the political authorities in Alderney and Sark. The Policy and Finance Committee in Alderney, whilst it has yet to formally consider the proposals set out in this Report, has confirmed that the consistent view of the States of Alderney is that it has a common interest in high quality regulation and would wish that the same level of protection is afforded persons doing business in Alderney as in Guernsey. The political authorities in Sark will be discussing the proposals at a future meeting.

Consultation

The Commission consulted with Steering Groups and Working Parties, made up of industry representatives and members of the Insurance Division of the Commission, on its proposed changes. Following development of the changes, consultation papers outlining the proposed amendments to the laws were circulated to the wider insurance community in the Bailiwick to obtain further input so that the proposals could be refined. The revised proposals are contained in this Report. The Commission also consulted with Commerce and Employment Department on its proposals.

Recommendations

The Commerce and Employment Department concurs with the views expressed by the Guernsey Financial Services Commission and therefore, recommends the States:

1. to approve the proposed amendments to IMIIL set out in paragraph 2 of the letter from the Guernsey Financial Services Commission quoted in this Report concerning:

1.1 Minimum capital requirements and licensing criteria; and
1.2 On-going business requirements; and
1.3 Commission powers; and
1.4 Miscellaneous powers.

2. to approve the proposed amendments to IBL contained in paragraph 3 of the letter from the Guernsey Financial Services Commission quoted in this Report.

3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

Yours faithfully

Stuart Falla
Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 18th June, 2007, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposed amendments to the Insurance Managers and Insurance Intermediaries Law set out in paragraph 2 of the letter from the Guernsey Financial Services Commission quoted in that Report concerning:

    1.1 Minimum capital requirements and licensing criteria; and
    1.2 On-going business requirements; and
    1.3 Commission powers; and
    1.4 Miscellaneous powers.

2. To approve the proposed amendments to the Insurance Business Law contained in paragraph 3 of the letter from the Guernsey Financial Services Commission quoted in that Report.

3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

REFORM OF THE GUERNSEY BAR
and REGISTRATION OF OVERSEAS LAWYERS

Executive Summary

This report proposes the enactment of legislation

- incorporating the Guernsey Bar as a statutory body, the objects of which will include upholding of the rule of law and the maintenance of professional standards;

- creating a more modern, transparent and effective investigatory and disciplinary régime to deal with complaints of professional misconduct by Guernsey Advocates;

- introducing the registration of, and, in defined circumstances the adjudication of complaints and imposition of sanctions against, certain overseas lawyers working in the Bailiwick.

Report

Her Majesty's Comptroller has written to me in the following terms:

> ***"1 Background***
>
> At the end of 2004, and in the context of changes being introduced in Jersey in respect of the regulation of the legal profession in that Island, Her Majesty's Procureur set up a committee to review the constitution and functions of the Guernsey Bar and, particularly, the disciplinary procedures which are presently in place.
>
> Following the initial stages of the committee's deliberations HM Procureur stood down and Advocate Peter Atkinson, at the request of the Bâtonnier, took over as Chairman in June 2006. The committee has undertaken a considerable amount of work and produced a paper earlier this year which was approved at an extraordinary general meeting of the Bar in May, subject to some modifications which were endorsed without any dissenting vote. The process benefited considerably from the Bailiff's contributions ,and the Royal Court has approved the proposals for reform of the Bar which I have the honour to set out in this letter.
>
> At around the same time when concrete proposals were formulated by the committee referred to above, ongoing work on the requirements expected by international agencies such as the Financial Action Task Force was focussing inter alia on the supervision of lawyers, including the need to introduce at least

some measure of oversight of non-Advocate-lawyers practising in the Bailiwick. A central aspect of the proposals developed in relation to the Guernsey Bar is the establishment of a more transparently fair adjudication and sanction régime in professional conduct cases. It is considered that this regime might be appropriately adapted to aspects of that oversight also.

2 Present constitution and governance of the Guernsey Bar

The Guernsey Bar is an unincorporated association of Advocates admitted by the Royal Court. The Bar is administered by the Bar Council, which was established by a Resolution passed by the Bar in General Meeting in 1994. Under the chairmanship of the Bâtonnier, the Council comprises one representative of each of the individual firms (including those in Alderney and Sark), a representative of the St James Chambers Advocates, and a representative of the in-house Advocates. Its constitution has not changed since 1994, but its size has grown significantly due to the increased number of firms in the Islands. Including the Bâtonnier, Deputy Bâtonnier and Bar Secretary the Council now numbers 23.

The Bar is regulated by the Rules of Professional Conduct which were also formalised in 1994, and have since been amended to a very limited extent. Disciplinary proceedings for breach are referred to a Chambre de Discipline which is comprised of a Law Officer and two senior members of the Bar. The Chambre system in its present form was created in 1932. It has the power to refer a serious breach to the Royal Court, which alone can suspend or disbar an Advocate.

3 The need for Bar reform

Since 1994, the Bar has grown very considerably in numbers, and is more diverse in its membership. Some of the increasing number of firms are parts of businesses which operate globally, whilst the much expanded number of Advocates includes those employed in St James Chambers, in-house Advocates working in commercial businesses, non-practising and retired members, as well as Advocates in private practice. These differences, it is considered, add to the desirability of the Bar being afforded a recognisable and ascertainable existence.

With regard to governance, it is now considered that the Bar Council should be representative of the whole Bar, and those willing to serve on it should be doing so to represent and promote the interests of the Bar, and not those of individual firms. It should be an executive body of a size and effectiveness akin to a board of directors or similar governing body. A committee of 23 is unwieldy.

The Council’s existing mandate includes the promotion of the profession and high standards of professional conduct among Advocates. This mandate should include training and education, and of course, professional development. It should also include the monitoring of professional standards which would extend to professional indemnity insurance and money laundering compliance. There is

also a greater emphasis in modern professional and financial services oversight on segregation between promotion and regulation.

Accordingly, there is an increasing tendency to make complaints procedures more accessible to complainants and transparent in their operation. This had already been recognised by the Bar, and when the Bar website, www.guernseybar.com, was set up in 2005, a section was included under the heading of "complaints". Procedures should be clear and effective, seen to be impartial, provide a fair hearing for both the complainant and the person who is the subject of the complaint, and confer appropriate rights of appeal.

Seen against that background, it is no longer considered acceptable for the Law Officers to be charged with overseeing disciplinary proceedings involving a member of the Guernsey Bar. In some cases as they are members of the Bar their impartiality might be questioned; and some circumstances might involve the possibility of criminal proceedings, which would obviously affect their ability to act. Equally, it is considered that the Royal Court should not be the first instance adjudicator on allegations of professional misconduct, as the Court may be required to hear civil or criminal proceedings which could affect the perceived impartiality of the Court in any subsequent disciplinary hearing involving the same Advocate.

4 The proposals for reform of the Bar

4.1 Constitution and governance generally

The Bar and the Royal Court have endorsed the proposals of the review committee referred to above that the changes to the constitution and administration of the Bar be incorporated in a new Law. This Law would in particular incorporate the Bar as a statutory body with power to take action in its own name, operate bank accounts etc, specified objects including upholding the rule of law and the maintenance of professional standards, the Bâtonnier and Secretary as Officers, and Members of Council who would be democratically elected. It would need to extend to Alderney and Sark in order to include the members practising in those jurisdictions.

The new Law would provide a statutory foundation for the Guernsey Bar Rules, which, as at present would be adopted by the Bar in General Meeting and come into force once approved by H M Procureur and sanctioned by the Royal Court. The qualifications needed to become an Advocate would not be incorporated in the Law or Rules, but would be set by Order of the Royal Court from time to time. The Rules might, however, provide for different categories of membership (e.g. practising, in-house (“associate”) retired etc.). They would also provide for the constitution and operation of the Bar Council; the holding and conduct of general meetings of the Bar; and administrative matters such as annual subscriptions and consequences of non-payment. With regard to practice as such, it is anticipated that the statutory power in the Law would be wide enough

to permit the establishment through such Rules of a system of continuous professional development; levels of professional indemnity insurance; experience requirements for particular practice arrangements; and perhaps even suspension and intervention in cases of incapacity. A potentially most helpful development, for which the Law would also enable Rules to provide, would be a system for dealing with client complaints about Advocates fees, but falling short of professional misconduct.

4.2 Disciplinary proceedings

It is proposed that the present ad hoc adjudication and sanction system briefly outlined at paragraph 2 above should be replaced, for the reasons given at paragraph 3 above, with a more modern, transparent and effective investigatory and disciplinary régime. The proposal is essentially that complaints of professional misconduct by an Advocate (whether by clients, relevant authorities, other lawyers, or others having a proper interest) would be referred to a Tribunal of three persons, which (respecting the language of our heritage whilst modernising its institutions) would continue to be known as the "Chambre de Discipline" when dealing with complaints concerning Advocates (qv paragraph 5 below for the tribunal's other proposed sphere of operation).

There is always a tension in populating bodies charged to adjudicate on the conduct of members of professions, between a need for experience and understanding of the demands and complexities of practising the profession concerned on the one hand, and an equally important requirement for sound judgment from the perspective of users and the general public (the absence of the latter, of course, being where the present arrangements are particularly weak). A tribunal including both professional and "lay" members is the solution normally propounded; but if the balance is tilted towards the former the complainant (and perhaps the public more generally) may perceive an element (real or imagined) of peer protection; and if it is tilted towards the latter the professional complained about (and perhaps the profession more generally) may perceive an element (real or imagined) of under-informed mistrust. Neither is conducive to guaranteeing a just outcome or commanding confidence in the system.

In this respect the innovative proposal, as developed by the review committee and modified after consultation with the Bar, in my view has the potential to represent a significant improvement on systems in place elsewhere, and is particularly suitable for the very varied nature of Guernsey's legal environment (with the additional merit of being adaptable for the tribunal's other proposed sphere of operation referred to in paragraph 5 below). It is that the three person tribunal sitting in any case concerning a Guernsey Advocate should comprise:

- One member who is a practising Guernsey Advocate of not less than 15 years' call;

- One member who is not and has never been a practising Advocate or lawyer of any other description;

- One member who is a fully qualified lawyer with at least 15 years' call or post qualification experience in any part of the British Islands, whether as a practising lawyer or judge, but who is not a Guernsey Advocate or currently practising as a lawyer in Guernsey.

It is proposed that an Appointments Committee comprising the Bailiff, the senior Jurat and the Bâtonnier for the time being, would appoint three panels of suitable persons (holding office for 5 years and not eligible for re-appointment) from each of which one member would be invited to comprise any particular Chambre. A person with appropriate qualifications or experience – perhaps a lawyer but not a practising member of the Guernsey Bar - would be needed to act as registrar, collecting and presenting the evidence, and generally organising, assisting and advising at hearings; he or she would be remunerated purely on a time reasonably worked basis. Except to the extent of any recovery made where a complaint is upheld, the cost of operating the system in respect of Guernsey Advocates would be met by the Bar, through the annual subscriptions and any other income.

Complaints about the conduct of Guernsey Advocates would initially be made to the Bâtonnier, who would be empowered to reject frivolous or vexatious complaints, but otherwise would refer them to the registrar. The proceedings of a Chambre would be inquisitorial in their nature. There would be a chairman (not the practising Advocate) and some basic rules, but the intention would be to consider evidence collated by the Registrar and submissions of the parties, normally in private unless the Advocate concerned asks for a public hearing, with as little formality as a thorough and fair consideration of the issues will allow. Where a Chambre upheld a complaint of professional misconduct it would be able to impose appropriate sanctions, ranging from a warning to suspension of the offending Advocate's right to practise for a period of up to three months, as well as requiring him or her to pay the cost of the proceedings. If on the facts as found a Chambre considered the sanctions available to it were inadequate, it would refer the matter to the Royal Court, which, sitting as a Full Court, would alone retain the power to suspend for more than three months, or to disbar completely. The Royal Court would also be the appropriate forum to determine any appeal, except of course an appeal against a suspension or disbarment imposed by it on such a reference, which would lie to the Court of Appeal.

5. Overseas lawyers

Those lawyers other than Guernsey Advocates who practice their professions in the Bailiwick are not currently subject to regulation locally in terms of their professional conduct as such. Of course, Guernsey Advocates bear some responsibility for the conduct of their employees, whether legally qualified elsewhere or not; such lawyers are, like everybody else, subject to the criminal laws of the jurisdiction and liable to suit before the Bailiwick's civil courts; and

they are subject to the requirements of the Laws and Regulations administered by the Guernsey Financial Services Commission to the extent that they carry on regulated finance business. But, except in that last-mentioned context, they are not at present obliged to obtain any licence or registration from, nor to submit to any supervision by, any locally established authority. There is nothing particularly surprising, or different from most other professions, about that. They are subject to the general laws of the jurisdiction, subject to any special régime regulating a particular field in which they practice, and in terms of rules of professional conduct subject to the rules of the relevant professional body in their jurisdiction of qualification. In the case of some professions, for example medical practitioners, Guernsey law requires registration and proof of qualification as a pre-condition for the right to practise locally; but the erasure of such registration is only provided for.

In the increasingly international context of some areas of legal practice, however, a case appears to be emerging for lawyers qualified in one jurisdiction and practising in another to be subject to at least some measure of oversight (beyond the application to them of the general law etc) in the latter. The clearest case for this at the present time is in the context of international recommendations in relation to anti money laundering and the countering of terrorist financing ("AML/CFT"). In May the States approved proposals for amendments to legislation which will provide for AML/CFT Regulations, currently only applying to financial services businesses, to be made in relation to lawyers involved in buying and selling real estate or business entities, managing client assets or accounts, and companies or other legal persons. The Regulations are likely to provide inter alia for the appointment of a regulator or supervisor for lawyers for AML/CFT purposes; and in order to perform its functions effectively that regulator/supervisor will need appropriate powers to monitor, inspect, and where necessary sanction. The Financial Action Task Force, which makes, and assesses compliance with, the international recommendations in these fields, rightly insists on an appropriate range of sanctions, extending in serious cases as far as withdrawal of the right to practice in the jurisdiction concerned.

If there is to be the possibility of withdrawing the right of an overseas lawyer to practise in the Bailiwick then there must be some mechanism for conferring that right in the first place. The appropriate mechanism would appear to be registration of overseas lawyers who are subject to the AML/CFT regimes, by the Greffe under the authority of the Royal Court. It is not recommended that any discretion be exercised, nor that any conditions should need to be fulfilled beyond production of appropriate evidence of qualification and standing in the lawyer's "home" jurisdiction.

This would be broadly similar to the registration requirements for doctors; and as in the case of that profession provision should be made for automatic removal from the Guernsey register upon the taking of any corresponding measure in the relevant overseas jurisdiction (or on the person's own request). Unlike the medical profession, however, the international recommendations are such that, as

explained above, there must exist in domestic legislation, in cases involving the AML/CFT controls, the possibility of a range of domestic sanctions being imposed, including the ultimate sanction of removal from the register even if the lawyer's name remains on the roll or similar list in his "home" jurisdiction. In the determination of their civil rights and obligations, as also of allegations which may in some cases have parallels with criminal charges, overseas lawyers practising in the Bailiwick are just as entitled as are Guernsey Advocates to a fair (and, if they want it, public) hearing within a reasonable time by an independent and impartial tribunal established by law. The adjudication and sanction system proposed above to deal with complaints of professional misconduct by Guernsey Advocates would with very limited adaptation appear to provide an appropriate régime for AML/CFT based complaints concerning overseas lawyers also. The principal adaptations would be that:

(a) The Bâtonnier's involvement would be not only inappropriate, but unnecessary as complaints would only come from the body overseeing AML/CFT controls on behalf of the regulatory/supervisory authority, which would not of course act frivolously or vexatiously.

(b) The Tribunal (which, when sitting in this context, would be known as the "Overseas Lawyers Tribunal") should, it is suggested, comprise:

- One member who is a practising lawyer of not less than 15 years' call or post qualification experience and holding the same professional qualification to practise (or, failing that, the most nearly analogous qualification practicable) as the lawyer concerned.

- One member who is not and has never been a practising lawyer of any description.

- One member who is a fully qualified lawyer with at least 15 years' call or post qualification experience in any part of the British Islands, whether as a practising lawyer or judge, but who does not practise on the basis of the same professional qualification as the lawyer concerned.

The three panels could doubtless be drawn up with this possible eventuality in contemplation.

(c) The Royal Court, upon a serious matter being referred to it to determine a sanction, could not of course disbar or otherwise disqualify the lawyer from practice, but could instead direct the Greffe to remove his or her entry in the register of overseas lawyers.

(d) Except to the extent of any recovery made where a complaint is upheld, the cost of operating the system in respect of overseas lawyers would be met by the States.

As complaints against overseas lawyers outside the AML/CFT context would continue to be handled by the lawyer's "home" professional disciplinary bodies (and it may be that those bodies will deal with some AML/CFT matters), it is to be hoped that such proceedings would be required only very rarely, but a system does need to be in place for the reasons set out above. In other respects the system outlined above in respect of Guernsey Advocates should, it is recommended, operate mutatis mutandis.".

Recommendation

The Policy Council concurs with the view expressed by H. M. Comptroller and therefore recommends the States to agree that legislation be enacted on the lines set out in this report.

M W Torode
Chief Minister

18th June 2007

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 18th June, 2007, of the Policy Council, they are of the opinion:-

1. That legislation be enacted on the lines set out in that Report

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

TAXATION OF LAND AND PROPERTY IN GUERNSEY
INCLUDING INTEREST RELIEF

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

26th June 2007

Dear Sir

1. **Executive Summary**

Page 955 of Billet D'Etat XIV 2007 (Implementation of the Economic and Taxation Strategy) provides as follows:

> *"Following the most recent consultations it is evident that further consideration needs to be given to wider issues such as whether the development of property, and associated building trade activities, should continue to be subject to the 20% rate of tax. In addition, the availability of interest relief for property investments also requires further, careful consideration to ensure that the final proposals do not undermine the rental market.* ***It is therefore proposed that a States Report on the treatment of property-related matters will be presented at the July States meeting.****"*

This report covers the following matters: -

(1) Profits arising from the development of land and property

At their May 2007 meeting, following consideration of the Policy Council's Report on the implementation of the Economic and Taxation Strategy the States resolved that rental income derived, by a company, from Guernsey[1] property should continue to be taxed, at 20%, in all cases with effect from 1 January 2008 (i.e. irrespective of the residence status of the shareholders in the company).

[1] For income tax purposes, "Guernsey" includes Alderney and Herm, and references in this Report to Guernsey should be construed accordingly.

This report contains a proposal that, with effect from 1 January 2008, profits arising to a company from the business of property development and exploitation of land in Guernsey should also continue to be taxed, at 20%, on an annual basis, (again, irrespective of the residence status of the shareholders in the company) rather than being subject to the "distribution basis" of taxation.

(2) Statutory Repairs Allowance

Under the Income Tax (Guernsey) Law 1975, as amended ("the Law") persons in receipt of income from land and buildings situated in Guernsey receive a fixed deduction, called a Statutory Repairs Allowance ("SRA"), instead of making a claim for actual expenditure on repairs etc. In addition, there are provisions that enable a landlord to claim extraordinary expenditure known as the excess repairs allowance ("ERA"). Such provisions have existed since 1920, when income tax was first introduced in Guernsey.

In the case of furnished lettings, 40% of the income received is attributed to the hire of furniture and a 33.33% concessionary deduction is made in place of the landlord claiming annual allowances (on account of depreciation) under the Law.

This Report proposes reductions in the levels of SRA currently granted and, in place of the entitlement of the landlord to receive a deduction of, or on account of, annual allowances, there be introduced different rates of SRA as between furnished and unfurnished lettings. However, it is proposed that the ERA should continue.

The effect of the tax changes will be to increase States revenues, and whilst it is not possible to predict accurately the amount involved, a survey suggests that this could be up to £1m per year.

(3) Interest Relief

The current position, as provided in the Law, is that there is no restriction on the type or level of interest relief that can be claimed by individuals and companies. In June 2006, the States resolved that from 2008 relief should be limited to business interest and, in respect of mortgages, up to a limit of interest on £400,000. This Report proposes some revisions to that Resolution principally in relation to allowing relief in connection with let property, and deals with some further areas of technical detail.

2. Profits arising from the development of land and property

Current position

Under section 2 of the Law, tax is chargeable on income from businesses, including profits derived from ventures involving land and property.

Background

Following the June 2006 States Resolution on Billet XI of 2006, such ventures carried out through companies would, with effect from 1 January 2008, be taxed at the standard rate of 0%. Whilst these profits would subsequently be chargeable to tax when distributed, or deemed to have been distributed, to Guernsey resident shareholders, to the extent that those profits relate to non-resident shareholders, they would escape liability to Guernsey tax.

At their May 2007 Meeting, arising from their consideration of the Policy Council's Report, the States resolved "that Guernsey rental income will continue to be subject to the 20% rate (after allowable deductions) regardless of the residential status of the company or its shareholders ...".

Paragraph 4(d) of the same Report noted that "following the most recent consultations it is evident that further consideration needs to be given to wider issues, such as whether the development of property and associated building trade activities should continue to be subject to the 20% rate of tax".

Proposal

The Department is of the view that there is a strong economic argument that, as land is a finite resource, Guernsey tax should continue to be charged at 20% on an annual basis, on the profits derived from the development or exploitation of land, irrespective of the residential status of the owner. This rationale, as regards residential status, is the same as is already being applied to Guernsey rental income (the term "rental income" meaning the amount of income assessable to income tax after allowable deductions).

The Department proposes that, for the purposes of the above, income derived from the business activity of land and property development in Guernsey where the company receiving the income had a beneficial interest in the land, which would include a "flying freehold" (subject to anti-avoidance provisions that would deal with the situations where the owner and developer/contractor were not the same but were connected/related) should constitute the development of land.

This proposal seeks to retain the status quo with effect from 1 January 2008 in respect of these particular categories of business, carried on by companies.

For the avoidance of doubt, other activities, carried out by companies, involving the development of land, other than as shown above, would only be taxable with effect from 1 January 2008 in accordance with the distribution basis but only in the hands of Guernsey resident shareholders. For example, this would cover ancillary building trades carried on through companies, such as electrical contractors and building merchants.

The following are examples of some activities/sources of income that would be taxed on the distribution basis:

- property development where the developer was not the owner of the land (but subject to the anti-avoidance provisions referred to above);

- horticultural and agricultural activities;

- fees received relating to the purchase or sale of land or property, such as estate agents' fees and conveyancing fees.

The following example demonstrates how the proposals would work if adopted by the States:

Company X Limited carries on property development activities in that it acquires plots of land and builds houses for sale. In addition, it also carries out general building/construction/repairs/maintenance works for customers.

The company is owned 50% by Guernsey residents and 50% by UK residents.

Its taxable profits are £500,000 which are made up of:

- £300,000 from development activities; and

- £200,000 from general building activities.

After 1 January 2008 the company's liability to Guernsey tax would be computed as follows:-

- Profits from development activities £300,000 @ 20% = £60,000.

- Profits from general activities £200,000* @ 0% = NIL.

* of which;

- £100,000 (50%), relating to the non-resident shareholders, would never be taxed; and

- £100,000 (50%) relating to the Guernsey resident shareholders would be taxed when the profits were distributed or were deemed to have been distributed.

Future Work relating to Land and Property

The Department is continuing to work closely with the Policy Council's Fiscal & Economic Policy Steering Group on exploring other possible options by

which revenues could be raised from land and property in the Island. As this work is ongoing, it is unlikely that any proposals in this regard would be brought before the States prior to 1 January 2008 particularly as consultation with interested parties will need to take place.

3. **Statutory Repairs Allowance**

Background

Under section 2 of the Law, income tax is charged on four classes of income. Class 3 is income from land and buildings situated in Guernsey.

The rules for calculating the assessable income arising from the ownership of any land or buildings situated in Guernsey are laid down in sections 9 – 16 of the Law.

Under section 9, the assessable income is the annual rental value (which, broadly, is the reasonable rent at which the land or building could be expected to be let from year to year, if the landlord was liable for all repairs, landlord's rates, taxes and insurances, or the actual amount of income received if higher) less authorised deductions as specified in section 11.

Section 11 specifies, inter alia, that amounts may be deducted on account of repairs (the SRA) as set out in section 12.

Section 12 provides that the amounts of SRA are to be:

- in the case of land (other than a quarry) – 5%;
- in the case of a dwelling house or a glasshouse – 25%;
- in the case of a building other than a dwelling house or a glasshouse – 15%.

(In each case the percentage refers to a percentage of the annual rental value).

The SRA is intended to replace a specific claim for actual expenditure on repairs having to be made by the landlord.

Under section 13 of the Law, however, if the owner of land or a building situated in Guernsey can prove that the cost to him of the maintenance, repairs, insurance and management of the land or building has, over the previous five years, exceeded the amount of the SRA claimable under section 12, he may, in addition to the SRA, claim an additional allowance (called the Excess Repairs Allowance ("ERA")).

Where the property being let is furnished, the amount of the rent received by the landlord is apportioned:

- 60% to "pure" rent; and

- 40% to the hire of furniture.

Against the "pure" rent the landlord is able to claim SRA and ERA as set out above, and against the income relating to the hire of furniture a concessionary 33.33% deduction is made on account of annual allowances that could be claimed by the landlord on account of depreciation of the furnishings, under section 90 of the Law.

The following example shows how all of the concepts referred to above work in practice:

During 2006 a landlord received £20,000 rent from a furnished dwelling.

"Pure" rent (60% x £20,000)	£12,000
Less SRA (25%)	£ 3,000
Average expended on repairs etc over the previous 5 years	£ 2,000
Therefore ERA due	nil
Chargeable rental income (£12,000 - £3,000 SRA)	**£ 9,000**
Hire of furniture element (40% x £20,000)	£ 8,000
Less 33.33% concessionary capital expenditure allowance	£ 2,666
Taxable income from hire of furniture	**£ 5,334**

Of the £20,000 rental income, therefore, £14,334 (£9,000 + £5,334) is actually charged to tax.

Reason for change

The Administrator of Income Tax ("the Administrator") has brought to the attention of the Department the fact that few claims to ERA are made in practice and he concluded that the rates of SRA granted overall may be excessive with a consequent cost to general revenue.

The Administrator has ascertained that for the Year of Charge 2004 (which, currently, is the most reliable complete year of charge for statistical purposes) £52.5m income was charged to tax, arising from land and buildings situated in Guernsey. This would be the amount net of SRA, ERA and the apportionment of the "hire of furniture" element.

The only body of taxpayers for which the Administrator has reliable details of the actual expenditure on repairs, maintenance, insurance and management, in relation to Guernsey based land and buildings, is companies (as the Administrator receives the financial statements for companies and the expenditure would be reflected in the profit & loss account).

The Administrator has undertaken a sample review of such companies from which he has established that if tax relief had been allowed on expenditure that had actually been incurred by those companies rather than on the basis of SRA/ERA, substantial amounts of extra tax would have arisen to general revenue.

In the sample reviewed, the total assessed income was £4.95m. Had actual expenditure been deducted instead of SRA/ERA, an additional £475,000 income would have been charged to tax.

Extrapolating the outcome of the Administrator's review across the taxpaying population suggests that if SRA/ERA was to be replaced with a system of allowing only actual expenditure, the potential saving could be £1m (approximately) in tax terms. This would be additional tax collected from the rental sector.

It must be emphasised that, based on the survey carried out, this is, in effect, the recouping of tax reliefs that are currently given in respect of expenditure that is not actually incurred by the landlord.

To remove SRA/ERA and replace it with a system of allowing only actual expenditure would have a resultant adverse effect on the Administrator's finite resources and may cause additional compliance costs for landlords, because each landlord would be required to keep and submit to the Administrator the equivalent of a profit & loss account in relation to income from land and buildings situated in Guernsey, which the Administrator would have to examine to ensure that only allowable expenditure was being deducted.

Proposal

As an alternative to removing SRA/ERA, and requiring landlords to claim actual expenditure on repairs etc, the Department proposes that the rates of SRA that are currently given, and which the Administrator's review suggests may be excessive, should be reduced.

To ensure that landlords were not unduly disadvantaged, however, the Department proposes that the ability for the landlord to claim ERA should be continued.

The Department also proposes at this time, however, that the tax system be simplified insofar as the right to claim annual allowances under section 90 of the Law, in relation to furnishings that form part of a furnished letting, should be removed and replaced with an SRA for furnished lettings that is higher than that for an unfurnished letting.

The Department proposes the following levels of SRA:

- for land (other than a quarry) – 2½%;
- for a glasshouse – 10%;
- for a dwelling house (where it is let furnished) – 15%;
- for a dwelling house (where it is let unfurnished) – 10%;
- for other buildings – 10%.

If, in the opinion of the Administrator, a landlord was providing low, or minimal, levels of furnishings for the principal purpose of obtaining the higher level of SRA applicable to furnished lettings then the Administrator would challenge that under the general legal avoidance provision contained in section 67 of the Law.

The Administrator has a number of Statements of Practice relating to specific situations involving the letting of property viz:

- where the gross receipts of a guesthouse business do not exceed certain limits (for the Year of Charge 2006 the limit was £7,700) the taxpayer may elect to be assessed on the basis of 40% of the gross receipts of the business instead of submitting accounts;
- where a guesthouse or boarding house provides only bed and breakfast, and where the gross receipts do not exceed a certain limit (for the Year of Charge 2006 the amount was £7,700) the owner may elect to be assessed on the basis of 65% of the gross receipts of the business instead of submitting accounts;
- where sleeping out accommodation is provided, the landlord may elect to be assessed on the basis of 80% of the gross receipts instead of submitting an itemised account of expenses;
- where an individual lets his own residence while he is away on holiday for any period(s) not exceeding two months in a calendar year, an overall deduction of 33.33% is allowed against the gross rent received in lieu of a claim on the strict statutory basis.

For the avoidance of doubt, it is <u>not</u> intended that the proposals contained in this part of this Report will have an effect on these Statements of Practice.

The intended changes to the regime for taxing companies (to be effective from 1 January 2008) are not expected to have any effect on the above proposals.

Consultation

The Department has consulted with the Housing Department and the Guernsey Private Residential Landlords' Association, which bodies broadly support the proposals relating to Statutory Repairs Allowance.

4. **Interest Relief claimed by individuals and companies**

In the Policy Council's May 2006 Report (Billet XI of 2006) paragraph 76 provides that, as well as allowing business interest:

> **"The Policy Council ... recommends that ... interest relief should only continue to be provided on principal private residences. The Policy Council believes that a maximum value for mortgages of not exceeding £400,000 is, at this time, appropriate."**

("Principal private residence" is hereafter referred to as a "PPR".)

Currently the cost of granting tax relief in respect of all mortgage interest is estimated at £10m per annum. It is further estimated that this figure will be reduced by £2m per annum once the £400,000 cap on PPRs takes effect.

Arising from the recent consultation process, the Department is of the view that it would not be appropriate to increase the £400,000 cap for any reason, for example to take account of inflation, interest rate increases or changes in the housing market.

Following the period of consultation, a number of representations were subsequently received in relation to the practical impact of the 2006 Report, the most significant aspect of which was criticism that interest relief would not be available against income from let property.

Having taken account of the various representations received, the Department considers it appropriate to recommend that relief should be available in the following circumstances, which are in part a variation of the proposals contained in the May 2006 Report and, in part, issues of technical detail required for the purposes of drafting the necessary legislation.

The issues covered in the remainder of this report concern interest relief relating to individuals and companies.

General Issues

- For Guernsey property only, relief would only be given where, at the time the relevant loan was advanced, the lender was a Guernsey based financial institution or other resident provider. This restriction would only apply to advances made on or after 1 January 2008.

- In relation to a property loan, interest would only be eligible for relief to the extent that the loan was used for the acquisition, construction, reconstruction, extension or repair of the property. The term "property" would include structures within the curtilage of the principal building, for example the construction of a conservatory, swimming pool, etc.

- Where a property was held through a company but interest to acquire the property was paid by the beneficial owner, interest relief may be allowed as if the beneficial owner had held the property direct. The same would apply to a loan taken out to acquire the shares in a company that held the property.

Let Property

- Interest should be allowed against letting income of the same year only. Where the interest for any year exceeded the rental income for that year, the excess interest would not be available for carry forward or for offset against any other income of the same year.

- Where there was more than one property let, the income received and the interest paid for all such properties may be aggregated into one income tax computation. However, this would be subject to the restrictions set out below on interest relief relating to properties that were also used for purposes other than letting.

- If an individual or company acquired a loan to purchase land on which a property was to be built to let, the interest paid during the course of construction would be "rolled forward" and available for off set once rental income commenced to be received. This would also apply where a dilapidated property was purchased but could not be re-let until refurbished.

- Where interest was paid on a loan on a property which was let, relief would only be granted for the periods that the property was let, or available to be let (which would mean actually marketed).

  For example, a cottage in France is let for six weeks in a year and used as a holiday home for eight weeks. For the remainder of the year it is available for letting but not actually marketed. Rents received are £2,400 and interest on the mortgage (with a French bank) of £80,000 is £4,000. Other allowable expenses are £600. Relief would be limited to £4,000 x 6/52 = £462. Tax on the rent would be due as follows:

Rent	£2,400
Less interest	£ 462
Less other deductions	£ 600
	£1,338 @ 20% = £267.60

- Where surplus accommodation within a PPR was let, relief would only be restricted by reference to the £400,000 limit and not by reference to the amount of rental income received.

Principal Private Residence

- The States have decided that relief should only be provided on a PPR. However, there are occasions on which occupation of a residence may be unavoidably interrupted. For example:

  - absence from the property for short periods, such as holidays;

  - absence from the property on business/secondment;

  - absence from the property whilst it was being renovated due to flood/fire or some other cause;

  - absence from the property due to other enforced absence, e.g. military service.

  It is proposed that the legislation should give the Administrator power to disregard these absences for the purpose of granting relief.

- Relief would only be available in respect of a PPR that was situated in Guernsey and if the claimant was solely or principally resident. Where an individual had more than one residence in the island and it was not clear which of these constituted the PPR, it is proposed that the Law should give the Administrator the power to make a determination for the purposes of interest relief.

- For the purposes of the £400,000 limit on loans on a PPR that were eligible for relief, all loans on the property would be aggregated, e.g. two unmarried individuals purchase a property in equal shares for £800,000 with a mortgage of £600,000. Of the £600,000, relief would be due on £400,000 (i.e. £200,000 per individual). This would ensure that married couples were not disadvantaged compared to single persons.

- Where an individual takes out a loan to acquire, construct, reconstruct, extend or repair a property situated in Guernsey (but not elsewhere) which was occupied as the PPR of a divorced or separated spouse, relief would be made available to the borrower subject to the £400,000 limit (as if his PPR and that of his divorced or separated spouse was the same property).

- Interest paid on a loan to build or renovate a property would be counted as eligible for relief, so long as it was in fact occupied as the claimant's PPR once building work had been completed.

- For the avoidance of doubt, in determining the extent to which relief was due, regard would be had to the actual use to which a loan advanced was put rather than the asset upon which the loan was secured, e.g. an individual extends his existing £300,000 mortgage on his PPR by £150,000, which is used:

  - £50,000 to build a conservatory;

  - £75,000 to buy a holiday home in Spain (which is not let);

  - £25,000 on a car.

  Only the interest on £50,000 would be eligible for relief.

Issues relating to businesses, trades and employment

- Interest would be allowed to a person who borrowed funds to lend to a company in which he had at least a 10% shareholding and was actively engaged (this term to be defined) in the company's business activities, so long as the company utilised the funds for a bona fide business purpose. This would not include monies lent to an investment company to fund the purchase of its investments.

- For the avoidance of doubt, interest paid on advances used wholly or in part to fund the personal drawings of a sole trader or partner in a business, or with any other duality of business or private purpose, would not be allowable.

- Interest paid on a loan to acquire a business or part of a business, including the acquisition of goodwill in the assets of a business or shares in a company that carried on a business, would be allowed subject to the claimant being actively engaged in the business at the time the interest was paid.

- Interest on a loan to an employee that was used to buy assets used wholly, exclusively and necessarily in the performance of the employment, which were not provided by the employer, would be allowed, e.g. the purchase of a laptop.

5. Resource Requirement

The Department does not envisage that the proposals above would have an adverse impact on the resources of the Income Tax Office.

6. Recommendations

Following consideration of this Report the States are recommended to agree that:

(i) With effect from 1 January 2008, profits arising to a company from the development, or exploitation of land, in Guernsey should continue to be taxed, at 20%, on an annual basis, (irrespective of the residence status of the shareholders in the company) rather than being subject to the "distribution basis" of taxation.

(ii) Income derived from the business activity of land and property development where the company receiving the income had a beneficial interest in the land, which would include a "flying freehold" (subject to anti-avoidance provisions that would deal with the situations where the owner and developer/contractor were not the same but were connected/related) should constitute development of land.

(iii) There should be reductions in the levels of SRA currently granted and, in place of the entitlement of the landlord to receive a deduction of, or on account of, annual allowances, there be introduced different rates of SRA as between furnished and unfurnished lettings as set out in section 3 of this report.

(iv) The regime governing interest relief in respect of property, businesses, trades and employment should be as described in section 4 of this report.

Yours faithfully

L S Trott
Minister

(NB The Policy Council supports the proposals.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 26th June, 2007, of the Treasury and Resources Department, they are of the opinion:-

1. That, with effect from 1 January 2008, profits arising to a company from the development, or exploitation of land, in Guernsey shall continue to be taxed, at 20%, on an annual basis, (irrespective of the residence status of the shareholders in the company) rather than being subject to the "distribution basis" of taxation.

2. That income derived from the business activity of land and property development where the company receiving the income had a beneficial interest in the land, which would include a "flying freehold" (subject to anti-avoidance provisions that would deal with the situations where the owner and developer/contractor were not the same but were connected/related) shall constitute development of land.

3. That there shall be reductions in the levels of SRA currently granted and, in place of the entitlement of the landlord to receive a deduction of, or on account of, annual allowances, there be introduced different rates of SRA as between furnished and unfurnished lettings as set out in section 3 of that Report.

4. That the regime governing interest relief in respect of property, businesses, trades and employment shall be as described in section 4 of that Report.

5. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

STATES OF ALDERNEY – COURT BUILDING RENOVATION

The Chief Minister
Policy Council
Sir Charles Frossard House
St Peter Port
Guernsey

13th June 2007

Dear Sir

Executive Summary

The States of Alderney wishes to proceed with the essential renovation of the Alderney Court Building at a total cost of £539,677.

At its May meeting the States of Alderney agreed that the renovation of the Court Building was one of its top priorities for capital funding and approved the commencement of the project subject to States of Guernsey approval.

The Treasury and Resources Department is satisfied that the renovation of the Court Building is necessary and the proposed works represent good value for money.

Background

Under the States Financial Procedures when the States of Alderney wishes to undertake a major capital project the prior approval of the States of Guernsey is necessary. In such cases the States Report seeking approval is submitted by the Treasury and Resources Department on behalf of the Alderney authorities.

In September 2003 the States of Guernsey considered a report concerning the renovations required on the Alderney Island Hall and Court Building. The States approved the renovations to the Island Hall at a total cost of £760,000 and delegated authority to the Advisory and Finance Committee to approve a capital vote for the Court Building renovations. The States also noted that the States of Alderney were intending to sell St Anne's House to part fund the cost of these two projects. At the time it was anticipated that the cost of renovation of the Court Building would be in the region of £250,000 and the proceeds from the sale of St. Anne's House would be of a similar order.

The total cost of the work undertaken on the Alderney Island Hall was £976,122. As reported in the 2007 Budget Report the Department, in accordance with the States Financial Procedures, approved an overspend of £216,122 charged to the capital allocation of the States of Alderney.

The States of Alderney now wishes to proceed with the renovation of the Court Building at a total cost of £539,677 but has advised that St. Anne's House will not now be sold but leased at a commercial rent to the Alderney Gambling Control Commission. The total funding now required for the two renovation projects is, therefore, very nearly double that anticipated when the matter was discussed by the States of Guernsey in 2003.

Following receipt of the letter from the Alderney Policy and Finance Committee (set out below) extensive staff level discussions have taken place between States Property Services and the Alderney authorities. It has been confirmed that the work being undertaken is essential repairs to the roof, guttering, elevations, windows and doors, external hard standings, timber treatment, re-decoration and some internal re-plastering. The contract price includes a general contingency sum of £50,000; this is in addition to the specific further allowance of £40,000 to cover external assistance in site supervision (£20,000) and temporary relocation of staff (£20,000).

It has also been confirmed that the works being undertaken would not impact on any future decision to provide new facilities for the Police and Customs in Alderney, a matter that is currently being discussed at staff level by the Treasury and Resources Department, Home Department and States of Alderney.

Alderney Court Building renovation

The Alderney Policy and Finance Committee has written to the Treasury and Resources Department in the following terms with regards to the renovation of Court Building:

> *"I refer to my letter dated 30th March 2007 and your reply dated 16th April in connection with the renovation of the Alderney Court Building, together with our proposal to lease St Annes House, rather than selling the building as originally planned.*
>
> *As a result the States of Alderney are due to consider the following Billet item at its meeting scheduled for 20th May 2007 :-*
>
> *Court Building Renovation*
>
> *The following letter has been received from Mr Walden, Chairman of the General Services Committee:-*
>
> > *"In early 2000, it became apparent that the main States administrative buildings, namely the Island Hall, Court Building and St. Anne's House were in need of substantial maintenance / renovation works.*

To establish the scale of the works, an extensive survey was commissioned on the three buildings.

The report on the survey was presented to the States later in 2000, whereupon it was resolved that a staged approach with the priority being given to the Island Hall would be adopted.

Following an unsuccessful tender process in 2001, the States resolved in July 2002 that the States administration functions would transfer to the Island Hall, which would be renovated to suit this application. Subsequently a tender was let for the renovation of the Island Hall, which was completed in late 2004.

Following vacation of St. Anne's House, which was required for relocation from the Court House with the scheme proposed at the time, tenders were prepared and sought with a return date of early 2005.

While these tenders were being considered – the returned tenders were substantially higher than the budget figure – the States was informed by the States of Guernsey Police that the part of the Court House building occupied by the Police was in need of extensive alteration and modification, the cost for which had not been included in the tender documents.

Despite protracted negotiations with the relevant departments in the States of Guernsey, no agreement was reached on either the scale or funding of the Police requirements.

At its meeting of 25th July 2006, the GSC, because of the continued water ingress and deterioration of the building, resolved to proceed with the basic refurbishment of the Court Building, to at least secure the structure of the building. Scaled down documents were therefore produced involving mostly external works with only modest essential internal works and internal decoration being proposed.

Tenders were sought from five on Island contractors and one contractor based in Jersey.

Three tenders were returned as below: -

Jackie Main Builders	*£575,368.70*
A.J. Bohan	*£593,249.00*
Charles Le Quesne	*£499,677.26*

The Charles Le Quesne tender has been checked numerically and contains no errors.

It is therefore recommended that the tender from Charles Le Quesne is accepted.

Pressure on the existing States technical staff has increased over the last few years, and with increases in capital expenditure projects will lead to further demands, particularly in relation to site supervision.

It is therefore recommended that a further allowance of £20,000 is made to cover external assistance in site supervision, in a similar manner to the site supervision of the Island Hall Contract. An additional £20,000 contingency should also be allowed to cover costs arising from temporary relocation of staff within the building made necessary by the works.

The above recommendations were approved at the Policy and Finance Committee meeting held on 24th April 2007.

I should therefore be grateful if you would place this matter before the States with the appropriate proposition.

W. Walden
Chairman
General Services Committee"

The States is therefore asked to resolve, after consideration of the above report from the Chairman of the General Services Committee, and subject to approval by the Guernsey States of Deliberation, to :-

1 Approve the renovation of the Court House as detailed in the above report

2 Accept the tender from Charles Le Quesne in the sum of £499,677.26

3 Approve the additional cost of £40,000 to cover external supervision and other costs associated with temporary movement of staff within the building

4 Vote the sum of £539,677.26 to cover the overall cost of the project

As mentioned above this proposal received approval of the Policy and Finance Committee at its meeting held on 24th April 2007. You will recall that at the recent joint meeting of the Treasury and Resources Department, and the Alderney Finance Advisory Group the timing of billet submissions was discussed. As a result it was agreed that in order to save time, it would be advantageous to run our billet submissions simultaneously.

I should therefore be grateful if you could include this item in your June Billet, conditional upon approval by the States of Alderney on 20th May."

Recommendations

The Treasury and Resources Department recommends the States to:

(1) Approve the renovation of the Alderney Court Building as set out in this Report at a total cost not to exceed £539,678.

(2) Authorise the States of Alderney to accept the tender from Charles Le Quesne (1956) Ltd in the sum of £499,677.26.

(3) Vote the States of Alderney a credit of £539,678 to cover the cost of the above works, such sum to be charged to its capital allocation.

Yours faithfully

L S Trott
Minister

(NB The Policy Council supports the proposals.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 13th June, 2007, of the Treasury and Resources Department, they are of the opinion:-

1. To approve the renovation of the Alderney Court Building as set out in that Report at a total cost not to exceed £539,678.

2. To authorise the States of Alderney to accept the tender from Charles Le Quesne (1956) Ltd in the sum of £499,677.26.

3. To vote the States of Alderney a credit of £539,678 to cover the cost of the above works, such sum to be charged to its capital allocation.

TREASURY AND RESOURCES DEPARTMENT

INTERIM FINANCIAL REPORT

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

1st June 2007

Dear Sir

I enclose a copy of the above Report which I should be grateful if you would lay before the States.

Yours faithfully

L S Trott
Minister

(NB The Interim Financial Report, which is appended to this Report, is published separately.)

(NB The Policy Council is pleased to note that States finances are both strong and in line with previous predictions. It particularly welcomes the significant decrease, *in real terms,* of revenue expenditure during 2006.

Continued restraint of public sector expenditure will remain one of the key elements of our Fiscal Strategy as identified in the Economic and Taxation Strategy and Government Business Plan.

The Policy Council recommends that the States note the Treasury and Resources Department's Interim Financial Report.)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 1st June, 2007, of the Treasury and Resources Department, they are of the opinion:-

To note that Report.

ORDINANCES LAID BEFORE THE STATES

THE TERRORISM AND CRIME (ENFORCEMENT OF EXTERNAL ORDERS) (BAILIWICK OF GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 24th May, 2007, is laid before the States.

THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) (BAILIWICK OF GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 24th May, 2007, is laid before the States.

THE NORTH KOREA (RESTRICTIVE MEASURES) (GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 12th June, 2007, is laid before the States.

STATUTORY INSTRUMENT LAID BEFORE THE STATES

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 4) REGULATIONS, 2007

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 4) Regulations, 2007, made by the Social Security Department on 6th June, 2007, are laid before the States.

EXPLANATORY NOTE

These Regulations add to a limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners or dentists, as the case may be.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 25th JULY, 2007

The States resolved as follows concerning Billet d'État No XIX dated 6th July 2007

PROJET DE LOI

entitled

THE TRUSTS (GUERNSEY) LAW, 2007

I.- To approve the Projet de Loi entitled "The Trusts (Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

THE CRIMINAL JUSTICE (AIDING AND ABETTING ETC.) (BAILIWICK OF GUERNSEY) LAW, 2007

II.- To approve the Projet de Loi entitled "The Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE TRANSFER OF FUNDS (GUERNSEY) ORDINANCE, 2007

III.-To approve the draft Ordinance entitled "The Transfer of Funds (Guernsey) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

POLICY COUNCIL

IMPROVED ENFORCEMENT POWERS FOR, AND RIGHTS OF APPEAL FROM DECISIONS OF, THE GUERNSEY FINANCIAL SERVICES COMMISSION

IV.- After consideration of the Report dated 18th June, 2007, of the Policy Council: -

1. To approve the changes to legislation included in that Report and summarised below:

(a) The extension of the enforcement powers available to the Commission to include:

(i) the issuing of a public statement about a regulated person or individual employed by a regulated person where there have been contraventions of rules or legislation, or where there is a need to do so to protect the public;

(ii) the introduction of enabling legislation for the imposition of administrative penalties which would not be activated unless regulations are made by a States of Guernsey body; and

(iii) the application of discretionary financial penalties against regulated persons and individuals employed by a regulated person.

(b) For appeals against decisions of the Commission to be made to the Royal Court and for the Royal Court to be able to conduct a full review of the Commission's decisions.

(c) The improvement of the rights of appeal to include the appealable decisions set out in paragraph 50 of that Report.

(d) That the Royal Court shall be empowered:

(i) to review the Commission's decisions in disputed cases affecting financial services businesses; and

(ii) where it disagrees with the Commission's decision in such cases, to quash the decision and remit the matter to the Commission for reconsideration.

(e) That the Royal Court shall decide the allocation of costs for each case between the parties involved with an appeal.

(f) The updating of the Banking Supervision, Protection of Investors and Regulation of Fiduciaries Laws as outlined in paragraph 52 of that Report.

(g) The amendment of company legislation to introduce rights of appeal and criteria as described in paragraph 53 of that Report.

(h) The repeal of unnecessary elements of the Control of Borrowing legislation as identified in paragraph 55 of that Report.

(i) The amendment of the Financial Services Commission Law to enable the

Commission's Decisions Committee to take adverse decisions, subject to the right of appeal to the Royal Court.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions

POLICY COUNCIL

PROPOSED CHANGES TO THE PROTECTION OF INVESTORS LAW, THE CONTROL OF BORROWING ORDINANCE AND THE COMPANY SECURITIES (INSIDER DEALING) LAW

V.- After consideration of the Report dated 18th June, 2007, of the Policy Council: -

1. To approve the changes to legislation included in that Report.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

COMMERCE AND EMPLOYMENT DEPARTMENT

PROPOSED CHANGES TO THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES LAW AND THE INSURANCE BUSINESS LAW

VI.- After consideration of the Report date 18th June, 2007, of the Commerce and Employment Department:-

1. To approve the proposed amendments to the Insurance Managers and Insurance Intermediaries Law set out in paragraph 2 of the letter from the Guernsey Financial Services Commission quoted in that Report concerning:

    1.1 Minimum capital requirements and licensing criteria; and
    1.2 On-going business requirements; and
    1.3 Commission powers; and
    1.4 Miscellaneous powers.

2 To approve the proposed amendments to the Insurance Business Law contained in paragraph 3 of the letter from the Guernsey Financial Services Commission quoted in that Report.

3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

REFORM OF THE GUERNSEY BAR
and REGISTRATION OF OVERSEAS LAWYERS

VII.- After consideration of the Report dated 18th June, 2007, of the Policy Council: -

1. That legislation be enacted on the lines set out in that Report

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

TAXATION OF LAND AND PROPERTY IN GUERNSEY
INCLUDING INTEREST RELIEF

VIII.- After consideration of the Report dated 26th June, 2007, of the Treasury and Resources Department:-

1. That, with effect from 1 January 2008, profits arising to a company from the development, or exploitation of land, in Guernsey shall continue to be taxed, at 20%, on an annual basis, (irrespective of the residence status of the shareholders in the company) rather than being subject to the "distribution basis" of taxation.

2. That income derived from the business activity of land and property development where the company receiving the income had a beneficial interest in the land, which would include a "flying freehold" (subject to anti-avoidance provisions that would deal with the situations where the owner and developer/contractor were not the same but were connected/related) shall constitute development of land.

3. That there shall be reductions in the levels of SRA currently granted and, in place of the entitlement of the landlord to receive a deduction of, or on account of, annual allowances, there be introduced different rates of SRA as between furnished and unfurnished lettings as set out in section 3 of that Report.

4. That, the regime governing interest relief in respect of property, businesses, trades and employment shall be as described in section 4 of that Report.

5. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

STATES OF ALDERNEY – COURT BUILDING RENOVATION

IX.- After consideration of the Report dated 13th June, 2007, of the Treasury and Resources Department:-

1. To approve the renovation of the Alderney Court Building as set out in that Report at a total cost not to exceed £539,678.

2. To authorise the States of Alderney to accept the tender from Charles Le Quesne (1956) Ltd in the sum of £499,677.26.

3. To vote the States of Alderney a credit of £539,678 to cover the cost of the above works, such sum to be charged to its capital allocation.

TREASURY AND RESOURCES DEPARTMENT

INTERIM FINANCIAL REPORT

X.- TO POSTPONE consideration of this Article until the September meeting of the States.

ORDINANCES LAID BEFORE THE STATES

THE TERRORISM AND CRIME (ENFORCEMENT OF EXTERNAL ORDERS) (BAILIWICK OF GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 24th May, 2007, was laid before the States.

THE CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (ENFORCEMENT OF OVERSEAS FORFEITURE ORDERS) (BAILIWICK OF GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 24th May, 2007, was laid before the States.

THE NORTH KOREA (RESTRICTIVE MEASURES)
(GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 12th June, 2007, was laid before the States.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE HEALTH SERVICE (BENEFIT)
(LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO. 4) REGULATIONS, 2007

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 4) Regulations, 2007, made by the Social Security Department on 6th June, 2007, were laid before the States.

K H TOUGH
HER MAJESTY'S GREFFIER